Q. I notice here you have a record goes all the way back to 1913, and some of those years you say "No record." "No record"—that does not mean there was not any income tax return filed; that means you don't have that—don't find it? A. That means we don't have any record of it (29).

WALLACE C. SUMMERS,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you tell us your name, please, sir? A. W. C. Summers—Wallace C.

* * *

Q. Yes, sir. And what do you do, please, sir? A. I am an auditor with Homer K. Jones and Company.

* * *

Q. Are you a certified public accountant? A. No, sir, I have a license but I am not certified.

Q. Then, I understand you are what I would call a public accountant? A. Yes.

Q. I see. How long have you been with Homer K. Jones, Mr. Summers? A. Something over twenty years, a little over twenty years (33).

* * *

Q. And they have been there how long? A. Oh, thirty or forty—forty years, I guess.

Q. And you work out of that office. I will ask you whether or not you had occasion to make out income tax returns for Mr. William Epstein, and in particular, returns for the years 1949, '50, '51, and '52. And before you answer that, I can hand you some returns which will give you an opportunity to see. I am referring now to Exhibit 1 through 5 of Sheley. A. Yes, I prepared them (34).

Q. Yes. And in addition, I will ask you whether or not you had occasion to prepare other returns, '45, '46, '47, and '48? A. I think I began about '45 (35).

* * *

Q. Yes. Did you ever see Mr. Kirschner along in there in and about the business on Beale Street? A. Oh, I saw him once in a while, yes (37).

* * *

Q. Well, as a public accountant, do you know, on income taxes, whether or not it was adequate for the purpose of—? A. I think it was adequate to get a tax return, yes, sir (38).

* * *

Q. Mr. Summers, speaking about—there has be some conversation here about the partnership return for the year 1952 relative to Epstein's Loan Office at 162 Beale. I am going to ask you, look at this first, and tell me what it is, and then we can let counsel see it? A. Well, that was prepared after Mr. Epstein took his nephew into the business.

Q. Yes. And that is Mr. Meynard Epstein, I believe (39), who went in with Mr. William Epstein? A. Yes (40).

* * *

Cross Examination by Mr. Bernstein.

Q. Mr. Summers, there seems to be a little misunderstanding about what was meant by "no partnership books" Did you mean by that statement that there was no double entry system of bookkeeping, is that what you mean? A. Yes, sir, that is what I mean.

Q. You did not mean to imply by that that Mr. Epstein did not keep a set of books? A. I did not mean to indicate that he did not have any kind of record at all, no.

* * *

Q. I would like to ask you, Mr. Summers, if you had seen this book that Mr. Louis Weis kept? A. Well, I imagine I have. It looks like the book (44).

Q. Do you know of your own knowledge if this book was kept in the day-to-day doing of business in that store? A. Well, it seemed to be. I just took the figures at the end of the year from that, you see.

Q. You took the figures from this book? A. At the end of the year, yes, sir.

* * *

Q. Mr. Summers, I would like to ask you if those are the books you got the figures from for your income tax returns? A. Yes, sir, it looks very much like them.

Q. And do those books agree with the income tax returns that they filed? A. Yes, sir, that is where I got my figures from to file his return.

Q. I would like to give you, Mr. Summers—

Mr. Will Gerber: Wait, wait, wait.

Mr. Vaden: Are you going to introduce them?

Mr. Will Gerber: Yes, we want to introduce those books, and mark them exhibits to his testimony, put them in the record, "A," "B," "C" (45). Epstein were accordingly marked as Collective Exhibit "E" to the cross-examination of Mr. Summers, and same will be found among the exhibits hereto.) (Said income tax returns of William Epstein were accordingly marked as Collective Exhibit "F" to the cross-examination of Mr. Summers, and same will be found among the exhibits hereto.)

Q. Now, Mr. Summers, these are the returns, '37 through '47 for William Epstein, '43 through '52 William and Pearl Epstein, '38 through '47 Pearl Epstein, '37 through '49 J. P. Kirschner, and '52 partnership return from the files of Homer K. Jones and Company?

Now, I would like to ask you, Mr. Summers, if the '52 book isn't the book of the partnership from which that partnership return was filed. A. Yes.

Q. I would like to read you an excerpt from Regulation 111 of the Commissioner's Regulations, amended to October 5, 1949, Section 2941-3, dealing with methods of accounting:

> "It is recognized that no uniform method of accounting can be prescribed for all taxpayers (49) and the law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his opinion best suited for his purpose. Each tax-

payer is required by law to make a return of his true income. He must, therefore, maintain such accounting records as will enable him to do so."

You have said, is that correct, that these books were adequate under this regulation? A. They were adequate to make a tax return, yes, sir.

Q. That is what the regulations are. Mr. Summers, I would like to ask you, do you file quite a few income tax returns? A. Oh, yes, sir.

Q. Are such items as sales tax and tobacco tax, and items like that usually estimated? A. Practically all of them are.

Q. Did you estimate the sales tax taken by Mr. Epstein on his return? A. Yes.

Q. Did Mr. Epstein ever try to conceal anything concerning the Kirschner business from you? A. No, sir, he did not (50).

* * *

Q. Now, Mr. Summers, on most returns that you file, do the people have a double-entry bookkeeping system? A. No, most of them would not have.

Q. They have systems somewhat similar to this, do they not? A. A lot of farmers don't have any books at all.

Q. Do you do an audit most of the time when you file tax returns? A. No, sir.

Q. Mr. Summers, would you tell me the circumstances that surrounded the filing of the amended 1951 return? A. In some way I discovered that Mr. Epstein had a loan at the Manhattan Bank and that there were some Government bonds up there as collateral, and I did not know it before—not having made an audit, I did not know that that loan—that he had such a loan. So I examined—Mr. Epstein and myself went up and looked at those bonds, and I made an amended return to include those constructive receipts. Although those coupons had not been clipped (51) from the bonds, it was really constructive receipts, though.

Q. Do you find that it is a common misunderstanding among taxpayers that they don't have to pay tax until

they get their money out of items like that, until they get their money out of it? A. An officer down at the Manhattan Bank told me he did not know they had to do that.

* * *

Q. Mr. Summers, as soon as you found out that the interest on the Government bonds had not been included, and you determined that an amended return should be filed, did you tell Mr. Epstein about it? A. Oh, yes, I immediately filed the return.

Q. Did he have any objection at all to filing it? A. Why, no, none.

Q. He paid the tax that was due on the amended return? (52) A. Yes.

* * *

Re-Direct Examination by Mr. Vaden (53).

* * *

Q. Now, you spoke about this sales tax matter. While you say you estimated it, will you tell us whether or not you estimated it from information you got from Mr. Epstein? A. No, I don't know, I think maybe it was my figures. I think I was figuring on the basis of him living out in Hein Park, and what expenses he might have, that that would be about right according to the way other people paid (54).

* * *

Q. And did you confer with him about what he thought would be about right on his sales tax? A. I don't know. I am pretty sure they were my figures, but we discussed it, I am sure.

Q. That is what I say, you discussed it with him? A. But I am sure it is my figures (55).

* * *

H. A. SHELEY,

the said witness, upon being recalled to the stand, and having been previously sworn, testified further as follows:

* * *

Direct Examination (Further) by Mr. Vaden.

* * *

Q. All right. '21-'23, for those three years, "No record." Now, under your system—and you say you are in charge of files and records—I simply want to know what the words "No record" means? A. That means that no returns have been filed for those years.

Q. There is no record of any returns having been (57) filed for those years? A. That is right.

Q. So, then, what you mean there that means—do you keep a record of all returns that were filed so you can check against them? A. Yes, sir.

Q. And for those years you had no record of any returns being filed? A. No, sir.

Q. That is what the words mean? A. That is right (58).

* * *

Cross Examination by Mr. Will Gerber.

Q. Mr. Sheley, did anybody talk to you about this case after you left the stand after you testified this morning? A. Well, yes, sir.

Q. Somebody talked to you about it. Now, you testified this morning that "No record" meant you could not find a record, didn't you? Didn't you testify to that this morning? A. Well, I might—maybe I did.

Q. Well, didn't you—didn't you testify this morning that "No record" meant you could not find a record, is that right? A. If I couldn't find it, there is no record.

Q. Sir? A. If I couldn't find it, there is no record.

Q. There is no record. Now, you want to tell us that this "No record" means no return was filed? A. Yes, that is what it means.

Q. Didn't you testify this morning the reverse? Didn't you testify this morning that "No record" meant no return could be found? Didn't you tell us that when you testified this morning? (59).

Mr. Vaden: If the Court please, if no record could be found—

A. That is right.

* * *

Q. I am asking you if you weren't talked to after you left this stand this morning by some member of the District Attorney's office or some assistant? A. Yes, sir (60).

CAMERON D. HUDDLESTON,

the next witness, having first been duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

* * *

Q. And when you were with the Internal Revenue Department in Memphis, were you what we commonly denote as a Revenue Agent? (61.) A. I was a Revenue Agent in the Field Audit Division.

* * *

Q. Yes. Now, I will ask you whether or not you had occasion to go into—I don't know how many years involved, but I expect starting in '47, some time back—into the question of income tax returns of William and Pearl Epstein? A. Yes, sir, I did.

Q. It appears they are in business down on Beale Street. And do you remember about when that was, when it was assigned to you? A. In 1953, the early part.

Q. '53?

Mr. Will Gerber: What month did you say? A. The early part.

Mr. Will Gerber: The early part? (62.)

* * *

Q. Intelligence section. Now, tell us about this. Could you tell us, for instance, about how many—I don't know whether you keep a card on it or not, but about how many days you figure you put in on the Epstein matter before your transfer? I don't mean consecutive days, but generally speaking, working days? A. It was in the neighborhood of sixty days (64).

* * *

Q. Will you tell us whether the taxpayer submitted any books, records and papers to you which would verify the figures on the return? A. Yes, sir, he did.

Q. And were you able to verify the whole return from the books, records and papers? A. The figures on the return did agree with the books and records that he gave me.

Q. I see. I see. All right. Now, then, after the books, records and papers were given to you, were you then able to verify the figures from the books, records and papers? A. Yes, sir (67).

Q. And how did you do that?. A. Well, there were totals on the books, and I verified some of the addition and checked—

* * *

A. (Continuing) There were totals on the books that could be checked with totals on the returns.

* * *

A. (Continuing) And there were various expressions on there that could be verified with figures on the returns, and, as I remember, I read some adding machine tapes and verified to the extent possible the figures that were on the books and records.

Q. All right, tell us what else you did. A. I had Mr. Epstein give me some contracts for sale of real estate and I had him give me his personal records on his rental income, dividends and interest income, and so forth.

* * *

A. (Continuing) And I had him give me his records of his pawn brokerage business. Those were my three primary sources of information.

Q. Now— A. (Continuing) Excuse me a minute. I might say I (68) asked him to give me his cancelled checks and bank statements, too.

Q. Yes, sir. And upon receipt of all of those, what was then your opinion about whether or not the return was true or correct? A. I felt like the returns were not correct.

Q. Yes, sir. Then what did you proceed to do? A. I resorted to the net worth method of computation to attempt to verify the accuracy of the returns.

Q. Yes. Now—well, you have mentioned that he did have some books. Will you tell us whether or not, if you know, anything about the books being incorrect. A. I don't know about that. Do—you mean do I know that the books were incorrect, or do I know that they did not agree with what I felt was the correct income—is that what you mean?

Q. Well, I mean by that, incorrect or incomplete, whichever you prefer. A. I felt like that the books did not reflect his true income.

Q. Oh, I see. And that is when you decided to bring into play the net worth method? A. Yes, sir (69).

* * *

Q. Sales store. Speaking about these books, can you give us some idea about what sort of books he did maintain, the ones that you saw?

* * *

A. Well, those books are of a type commonly known as single-entry books. There was one page for receipts, and one page for purchases, and one page for other expenses, and the total things that he had on there would be in sales and his purchases and various expenses, miscellaneous expenses, like insurance, light, gas and water—miscellaneous expenses of that sort. And he also had a section devoted to his personal expenditures that were paid out of his business bank account. And he had another section devoted to salaries, showing wages paid and Social Security and withholding tax, and the Social Security number of his employees, and so forth (71).

* * *

Q. Do you know who started keeping the books somewhere around—you say January 1, '49—do you know who started keeping the books after that? A. They were kept in the public accounting firm of Louis Weis (72).

* * *

Q. Now, did you have any conversation with Mr. Epstein about the way he conducted his business, that is, the purchase of merchandise and the loaning of money, and so forth? A. Yes, I asked him about that generally, how it operated, and not too much detail.

Q. Well, he was at that time in the pawn broking business, that is true? A. Yes, sir.

Q. Did you find out or were you able to tell whether he used much or little cash in the conduct of that business? A. He used a great deal of cash in that business.

Q. Did you have any conversation with him about the cash he kept on hand? A. Yes, sir.

Q. What did he say? (74.) A. He said he kept a great deal of cash on hand, and because he needed four or five or six thousand dollars a week in his business. And so I asked him if he could give me a record of the cash on hand as of, say, the beginning of certain years, like '50 and '51, '52 and '53, and he said that he could not, that he had no record like that. And I asked him, therefore, what would have been the most amount of—the largest amount of cash he had ever had on hand, and he said he thought around thirty-five or forty thousand dollars would be the largest amount that he had ever had on hand. I needed those figures for my net worth statement.

Q. I see. Did he give any particular reason for keeping cash on hand in the amount of thirty, thirty-five—whatever it was—thirty-five thousand dollars? A. Well, of course I knew that he needed a lot of cash in his business, because most of his business is cash, and he told me that he had once been short of cash and it had hurt his business a great deal, I believe he said back in '29— (75).

* * *

Cross Examination by Mr. Will Gerber.

Q. Mr. Huddleston, you say you went down to Mr. Epstein's place in the early part of '53 to make a routine check? A. Yes, sir.

Q. Was it a routine check, or anything other than a routine check? A. It was a routine check.

Q. It was a routine check. You went in Mr. Epstein's place. Did he cooperate with you? A. Yes, sir.

Q. Anything you asked him for, he turned over to you, did he not? A. Yes, sir.

Q. You asked him for his books for '49, '50, '51, and '52, and he turned them over to you? A. That is right.

Q. Is that right? A. Yes, sir.

Q. You asked him for his checks and he turned them over to you, is that right? A. That is right.

Q. You asked him for real estate contracts and he (82) turned them over to you, is that right? A. That is right (83).

* * *

Q. Mr. Huddleston, in your examination out there, why didn't you examine the Kirschner books? A. There were no—Mr. Epstein said there were no Kirschner books, that they must have been destroyed.

Q. Are you sure about that? A. Yes, I am positive about that.

Q. Let me ask you this. Why didn't you check the Epstein books prior to 1949? A. Because he said he did not have them, that is why.

Q. He said he did not have them. Don't you know, Mr. Huddleston, that in 1939 Mr.—was in '49 or—don't you know that Mr. Neal, a member of the Internal Revenue Department, the same department that you belong to, in 1949 he went into Mr. Epstein's place and asked for the books for 1946, and those books were turned over to him and they were checked at that time, don't you know that (87) to be a fact? A. I think that is true, yes.

Q. Sir? A. I think that is true, yes.

Q. Then you tell us now that Mr. Epstein told you that he did not have any books prior to 1949? A. That is exactly right.

* * *

Q. I want to show you some books here and ask you if this isn't the Kirschner books for 1938? A. I never saw these books before.

Q. I will ask you if this isn't the Kirschner books for 1942? I will ask you to look at them. A. Well, they say J. P. Kirschner.

Q. That is right, that is the book, isn't it? A. In the year '42.

Mr. Will Gerber: That is right (88).

A. But I never saw these books before.

Q. I ask you if these aren't Kirschner books for 1948?

* * *

Mr. Will Gerber: If Your Honor please, I have shown by this witness that Mr. Neal went down there in '49 and asked for the '46 books, and they were there, and the '46 books are there, too, and I want to show the books in here. They are available to Mr. Norris, anybody in the Intelligence Department any time, and have always been there. I just want to prove that (89).

* * *

Mr. Will Gerber: I want to show the books here, if Your Honor please. I want to show the books here for Kirschner '37 to '49, the whole time he operated.

The Court: Now, as the Court has already remarked, there is a way to do that. You have shown the witness certain books and records, which (90) he says he has never seen before.

Mr. Will Gerber: Well, he could have seen them.

The Court: All right.

Mr. Will Gerber: They are there.

The Court: Mr. Marshal, put the books all back over there, please, sir (91).

* * *

Q. Now, Mr. Huddleston, you say you left here when? A. June 20th, '54.

Q. June 20th, '54. Did you find anything wrong with these books so far as you were concerned? A. Were there any errors in the books, you mean?

Q. No, I am talking about the adequacy of the books. A. The books—

Q. —From the standpoint of complying with the regulation.

Give me the regulation.

Section 29—29, 41-3 of the Internal Revenue Service.

> "It is recognized that no uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer shall (97) adopt such forms and systems of accounting as are in his judgment best suited to his purpose. Each taxpayer is required by law to make a return of his true income. He must, therefore, maintain such accounting records as will enable him to do so."

Do those books comply with this regulation?.

A. They do in form, yes.

Q. They are adequate insofar as this regulation is concerned, is that right? A. They do in form, yes.

Q. What did you say—form? I say, are they adequate in accordance with the terms of this regulation? A. Well, I would say it is a question of substance versus form in this case, because I don't think some of the figures on there are right.

Q. Well, did you find anything wrong there with the way the books were kept? A. If the figures had been put down properly, they would be all right.

Q. Well, you don't know whether they are put down properly or not? A. I am giving you my opinion, Mr. Gerber.

Q. Oh, you are guessing, is that right? (98) A. I am giving my opinion.

Q. I see, and guessing, is that right? An opinion is a guess— (99).

* * *

Q. Did you tell anybody about this? A. Anybody—?

Q. When you found those books in that shape, did you inquire about it? A. No, I did not.

Q. Why didn't you? A. I did not make the concluding investigation, Mr. Gerber.

Q. Why didn't you—you found those books were not being kept correctly and did not suit you—why didn't you tell anybody about it? A. As previously stated, when we get to a certain point in the investigation, we are through—supposed to call the Special Agent to investigate, and we are to conclude, we are to stop our investigation.

Q. When did you tell him the books—or the Special Agent tell him—tell him the books did not suit—not kept in accordance with the regulation—didn't you tell him that? A. I told him I thought the books were wrong.

Q. All right, when did you tell him that? A. Well, we had talked about the case several weeks before I left.

Q. When did you leave? (100) A. June 20, '54.

Q. Well, how long—you say you went to work at Mr. Epstein's place in the early part of '53, and you checked the books for about sixty days, is that right? A. Yes.

Q. You knew then after you checked the books they were not correct in your estimation, is that right? A. I was doing exactly as our regulations require us to do, and that is to suspend our investigation until the Special Agent can work with us, and then we are to proceed together after that.

Q. Well, the books were not correct, Mr. Huddleston; why didn't you notify somebody in the Department about it? A. I did.

Q. Who did you notify? A. I notified my superior in Nashville. That is how Mr. Norris happened to get in on the case.

Q. When did you notify your superior about the books in Nashville? A. I notified my superior that I thought the Special Agent ought to be helping.

Q. When did you do that? A. Well, I would have to ask Mr. Norris if he can find that letter in the file on that. It is part of the file (101).

Q. All I want to ask you about is when did you notify your superior about turning it over? A. I would have to refresh my memory on that, because I haven't seen the letter for a long time.

Q. Well, where is it?

Mr. Will Gerber: Do you want to turn it over to him?

Mr. Fitzhugh: No, sir.

Q. Have you got the Agent's report? A. No, sir.

Q. Where is the Agent's report? A. I did not write the Agent's report.

Q. Why didn't you write the Agent's report? A. because I did not get to conclude the investigation.

Q. This was a very serious case, wasn't it, Mr. Huddleston? You had guessed Mr. Epstein was all wrong about the way he kept the books, and there was something wrong about this thing; why didn't you make up the Agent's report, Mr. Huddleston? A. The case was not over, Mr. Gerber.

Q. I know, but you were making arrangements—getting ready to leave here, Mr. Huddleston, and shouldn't you have made up the Agent's report before you left? A. No, sir, I could not because I would have to wait until Mr. Norris could work with me (102).

Q. But you were on the case before Mr. Norris. Why didn't you make out the report of what you did? A. Because I would have been wrong if I did, and I would have been subject to criticism by my superiors.

Q. Then you say you turned this case over to Mr. Norris when. In '54? A. Around June, some time around June.

Q. June, '54? A. Yes.

Q. Mr. Huddleston, would it interest you to know that it was not until May 13, '55, that Mr. Epstein received a letter from Mr. Rountree, the Internal Revenue Director, that the report—"The Internal Revenue Agent has submitted a report to this office to the effect that the books of account and records maintained by you and recording operations of your business were not sufficient for the pur-

pose of verifying your respective income taxes. The report indicates that the records covering income and liabilities of your business as a pawn broker are insufficient and not sufficiently detailed for the purpose of determining the correct amount of income subject to tax by you."

Isn't it strange, when you left in '54, and turned it over to Mr. Norris in June, '54, and no letter was (103) sent to Mr. Epstein until May 13, '55?

* * *

Q. I say, you found out in '53 that these records were not adequate in your opinion, yet nobody in the Internal Revenue Department notified him of this fact until May 13, '55, two years later, is that right? A. Mr. Gerber, I suspended my examination some time in '53.

* * *

Q. This letter says that "The Internal Revenue Agent has submitted a report to this office". Who was the Internal Revenue Agent that reported on that report? A. I think that would be Mr. Raines.

Q. Who? A. Mr. Raines (104).

Q. Mr. Raines? A. Yes, sir.

Q. Do you know when he submitted it? A. No, I don't.

Q. You don't know anything about that either? A. No, sir.

Q. I see. You knew at that particular time that his returns were being made by Homer K. Jones and Company, is that right? A. They had been regularly, yes, in the past.

Q. Did you go to the trouble of calling Homer K. Jones and Company and telling them that Mr. Epstein's books were not being kept like you wanted them kept? A. No, sir (105).

* * *

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No. 8394—Criminal.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

WILLIAM EPSTEIN, *Appellant*,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

APPEALED FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TENNESSEE,
WESTERN DIVISION.

APPENDIX TO APPELLANT'S BRIEF.

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA
VS. } No. 8394—CR.
WILLIAM EPSTEIN

DOCKET ENTRIES.

February 21, 1956	Filed Indictment
February 21, 1956	Filed order directing issuance of warrant and fixing amount of bond at $1,000.00
February 21, 1956	Issued warrant and handed marshal
February 23, 1956	Filed $1,000.00 appearance bond, Will Gerber, surety
February 23, 1956	Filed marshal's return on warrant, executed 2/23/56
February 27, 1956	Filed order recording plea of not guilty
March 26, 1956	Filed motion for bill of particulars
April 9, 1956	Filed order overruling motion for bill of particulars
June 25, 1956	Filed jury verdict of guilty on all four counts
June 26, 1956	Filed judgment and commitment, defendant sentenced to five years on each of four counts to run concurrently and fined $5,000.00 on Counts 1 and 2, and $7,500.00 on Counts 3 and 4, a total of $25,000.00 and costs
June 26, 1956	Filed appearance bond of defendant in sum of $5,000.00.
June 27, 1956	Filed supersedeas and appearance bond in amount of $32,500.00

June 27, 1956	Filed order refunding cash appearance bond and substituting property bond
July 3, 1956	Filed notice of appeal
July 27, 1956	Filed order extending time for filing and docketing record on appeal to Oct. 11, 1956
October 2, 1956	Filed order extending time for filing and docketing record on appeal
October 16, 1956	Filed reporter's transcript in 7 volumes

CERTIFICATE.

I, W. Lloyd Johnson, Clerk of the United States District Court for the Western District of Tennessee, do hereby certify that the above index of docket entries is a true and correct copy of all relevant docket entries as appears on the docket in this office.

This 22nd day of October, 1956.

W. Lloyd Johnson,
Clerk

(Seal)

By /s/ P. G. McClure
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA
VS.
WILLIAM EPSTEIN
} No. 8394—CR.

CLERK'S CERTIFICATE.

I, W. Lloyd Johnson, Clerk of the United States District Court for the Western District of Tennessee, do hereby certify that the papers and exhibits transmitted herewith and enumerated below comprise the Record on Appeal in the above entitled matter.

1. Indictment
2. Order recording plea of not guilty
3. Motion for Bill of Particulars
4. Order overruling motion for Bill of Particulars
5. Jury Verdict
6. Judgment and Commitment
7. Notice of Appeal
8. Order extending time for filing and docketing record on appeal
9. Order extending time for filing and docketing record on appeal
10. Reporter's transcript in 7 volumes.

In Witness Whereof, I have hereto subscribed my name and affixed the Seal of Said Court at Memphis in said District, this 22nd day of October, 1956.

W. Lloyd Johnson,
Clerk

(Seal)

By /s/ P. G. McClure
Deputy Clerk

REPORTER'S TRANSCRIPT.

Mr. Fitzhugh: May it please Your Honor, and gentlemen of the jury, defendant, William Epstein, is charged in a four count indictment with evading the income tax laws of the United States Government.

Are you agreeable, Mr. Gerber, to waive the reading of the indictment?

Mr. Will Gerber: Oh, yes; sure.

Statement of the case and the contentions of the Government were thereupon presented to the Court and jury by Mr. Fitzhugh, on behalf of the Government.

Mr. Will Gerber: May it please the Court, gentlemen of the jury, the defendant denies that he ever willfully defrauded the Government or anybody else in his life. He pleads not guilty to each of the allegations and each of the counts of this indictment, and now asks the Government to prove its case (7).

* * *

Government's Proof.

H. A. SHELEY,

the first witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you tell us your name, please? A. H. A. Sheley.

* * *

Q. What do you do up at Nashville? A. I work in the District Director of Internal Revenue Office.

Q. Yes, sir. Mr. Sheley, we are going into the question of answering a subpoena that the Government got out on Mr. J. M. Rountree, the Director here in Tennessee (9), or the income tax people. And are you the person that has been sent down here with the records we are talking about? A. Yes, sir, I have been designated.

Q. And, as far as these records are concerned, you are the custodian of the records and have been sent here for the purpose of answering the subpoena? A. Yes, sir, I am.

Q. Now, we are particularly interested to see here—and we did subpoena some income tax records of William Epstein and Pearl Epstein for the years 1949 through 1952; do you have those there? A. Yes, sir, I do. '49 through '51.

Q. '52? A. Through '52.

Mr. Vaden: Yes.

A. Yes, sir.

Q. Now, if you will, let Mr. Jonas hand them to me half a second, and I will let counsel see them.

These are the original returns brought from your files, are they? A. Yes, sir (10).

* * *

Q. Mr. Sheley, I notice in some of these exhibits, such as Exhibits 16 and 17, and in these 899's showing all these payments, these certificates go back as far as 1913, now, and sometimes you show some taxes paid—like when I see one here, 1924—they go back quite a ways? A. Yes, sir.

Q. Nevertheless, it appears that you have located all you could, and you say you had some searches made. Is there some—after a long period of years, is there some destruction method the Government uses, I mean? A. Yes, sir, in case of returns, yes, sir. After so many years they are destroyed (26).

* * *

Q. After so many years they are destroyed? A. Yes, sir, by act of Congress—Congressional authority.

Q. Yes, sir. However, they do keep a card system showing everything everybody paid? A. That is right, a record of payment.

Mr. Vaden: I think that is about all.

Cross Examination by Mr. Will Gerber.

Q. Mr. Sheley— A. Yes, sir.

Q. —You say you have Mr. Epstein's returns for '40, '41, '42, '43, '45, '46, '47, '48, '49, '50, '51, '52, '53, '54? A. I believe that is right.

Q. What became of '44? A. '44?

Q. Yes. Would that have been destroyed and those behind it not been destroyed? You mentioned '40, '41 (27), '42, '43, '45. Why would '44 be destroyed? A. Well, the Government has authority to destroy. I did not say it has been destroyed.

Q. In other words, you could not find it? A. I could not find it.

Q. You don't seem to have the partnership return for '52. What became of that? A. We could not find any record of that.

Q. Sir? A. We could not find any record of that partnership return.

* * *

Q. Mr. Sheley, do you say there was no partnership return filed? A. No, sir, I wouldn't say that.

Q. You wouldn't say that? A. I would say I did not find any record of it (28).

* * *

A. R. DAVIS,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you tell us your name, please, sir? A. A. R. Davis.

* * *

Q. Where and by whom are you employed, please, sir? A. Union Planters National Bank; Manhattan Bank (126).

* * *

Q. Now, Mr. Davis, I will ask you if you have produced here—and if at the time Mr. Epstein was doing business with your bank, or Mrs. Epstein, he filed with you or your credit department any financial reports showing his financial condition? A. Yes, sir, I have some.

Q. Have you made photostats of those for us? A. Yes, sir. I have four.

Mr. Will Gerber: We have no objection, Mr. Vaden. Go right ahead with them.

Mr. Vaden: I would like this marked the (161) next—this ought to be bradded.

Mr. Will Gerber: If Your Honor please, the only thing about these financial statements, we want to say this at this time, we object to the introduction at this time because, first of all, they are extra-judicial statements, there has been no corpus delicti proved here of any kind, and they are not competent here at this time.

The Court: I think they are.

Mr. Will Gerber: And we further object on—we want to further call your attention to the fact that unless these statements are corroborated, we object to them.

The Court: They are competent. Objection overruled.

Mr. Will Gerber: I want a ruling on this, if Your Honor please. Unless they are corroborated, we object to them.

The Court: Well, Mr. Gerber, this is a lawsuit which necessarily must be put on piecemeal—

Mr. Will Gerber: That is true, if Your Honor please.

The Court: —A step at a time (162).

Mr. Will Gerber: But I want to have this understanding on the front end with Your Honor. I don't want to irritate Your Honor. I want to get into the record what I think is right for our client here.

First of all, we have no objection here to these things —unless they are done properly—first of all, they have got to prove the corpus delicti, and second, they have got to be corroborated. Unless that is done, then we want to object to them at the conclusion of the proof.

The Court: All right, the record shows your objection and the Court's ruling.

Mr. Vaden: Collective exhibit the next number.

(Said photostatic copies of documents were accordingly marked as Collective Exhibit 18 to the testimony of Mr. Davis, and same will be found among the exhibits hereto.)

Q. Now, Mr. Davis, you have handed me—and so the record will show what they are, and I have had them marked Collective Exhibit 18 to Davis—the financial statement you produced here to Union Planters Bank given (163) by Mr. Epstein, financial statement as of February 2, '45, which he signed on February 16, 1945; also a financial statement executed by Mr. Epstein as of December 31, 1949, which he signed in January, 1950; also a financial statement as of January 1, 1952, which he signed March, '52; and also one as of January 1, '54, which he signed the same day.

Mr. Will Gerber: Of course, if Your Honor please, we at this time object to the introduction of any statement beyond '52, because 1952 is the last year in question. '54 is not in question here at all, if Your Honor please. '49, '50, '51 and '52 are the years. And we object to the introduction of any financial statement subsequent to '52.

The Court: What about that, Mr. Vaden?

Mr. Vaden: If the Court please, I wish to remove the year '54—frankly, I just noticed it—and have it marked for identification only, and not to be shown to

the jury at this time, and to be withdrawn in the event it is not connected up.

Mr. Will Gerber: Well, if the Court please, we object to it now for any purpose. It is a (164) subsequent financial statement made subsequent to the charge in this indictment. '52 is the last year in question.

The Court: He is merely asking it be marked for identification.

Mr. Will Gerber: If Your Honor please, I can't see any purpose in marking it if it is not competent.

The Court: He says on the promise it will be connected up in some way.

Mr. Vaden: Or withdraw it, and not in the record.

Mr. Will Gerber: I want it to be connected up.

Mr. Vaden: —Or withdrawn; marked for identification only, not be shown to the jury.

(Said photostatic copy of document was accordingly marked as Exhibit 19 for Identification to the testimony of Mr. Davis, and same will be found among the exhibits hereto.)

Mr. Will Gerber: If Your Honor please, he said something about passing these statements to the jury (165).

The Court: He said not to be passed to the jury.

Mr. Will Gerber: You are not going to pass them? It is all right

Mr. Vaden: That is, as of '54.

Mr. Will Gerber: Well, now—

Mr. Vaden: Going to pass these to the jury.

Mr. Will Gerber: As far as that is concerned, if Your Honor please, we object to their being passed to the jury until the corpus delicti has been proven and they have been corroborated. Then they can be passed to the jury.

The Court: I thought we had settled that.

Mr. Will Gerber: No, we settled—

The Court: The Court has ruled they are competent in evidence.

Mr. Vaden: Yes.

The Court: And you did state that you desired to reserve the right to object later.

Mr. Will Gerber: What I said— I am objecting now, if Your Honor please; I am objecting now—

The Court: Well—

Mr. Will Gerber: (Continuing) —To the passage of these statements to the jury until the (166) corpus delicti has been proven and they have been corroborated.

The Court: Do you necessarily desire to pass them to the jury at this time, Mr. Vaden?

Mr. Vaden: Yes, sir.

The Court: All right, I will let you do it.

* * *

(Recess.) (167.)

* * *

Q. In addition to the acquisition of credit information on the making of loans to Mr. Epstein, I will ask you whether or not the bank acquired information from credit agencies such as Dun & Bradstreet? A. I have some reports from Dun & Bradstreet.

Mr. Vaden: Yes. Let me see those, please.

If the Court please, I am handing in a large number of Dun & Bradstreet reports, I think most of which contain these financial statements we are talking about, but I ask it to be made a collective (171) exhibit for identification purposes only. I have a Mr. Barnett from the Dun & Bradstreet sitting right outside the door who will testify as to them being their reports, and all this, and that and the other.

Mr. Will Gerber: Just for identification?

Mr. Vaden: Yes. You need a better clip than that one. That thing will fly off.

Next number for identification to Davis.

(Said photostatic copies of documents were accordingly marked as Collective Exhibit 21 for Identification to the testimony of Mr. Davis, and same will be found among the exhibits hereto.) (172.)

* * *

Cross Examination by Mr. Will Gerber.

Q. Mr. Davis, as a matter of fact, you can't tell us whether all these deposit tickets are here, can you? A. No, sir, I cannot.

Q. You cannot. Mr. Davis, and as a further matter of fact, according to what you know by the records, Mr. Epstein always had up good, gilt-edged security on any loan, didn't he? A. The records show that.

Q. Show that he had more than enough to cover any (177) loan he made? A. That is right.

* * *

Mr. Davis, as far as these statements that have been offered, financial Statements, you know nothing about those statements?

A. No, sir.

Q. All you know, they are there at the bank? A. Yes.

Q. You don't know the circumstances surrounding the making of those statements? A. No, sir. All I know, they are in our credit file (178).

* * *

Cross Examination by Mr. Will Gerber.

Q. Mr. Gruber, what business are you engaged in? A. Real estate and insurance business.

Q. How long have you been in insurance and real estate (228) business? A. For almost thirty years.

Q. Do you know the defendant in this case, William Epstein? A. Yes, sir.

Q. How long have you known him? A. Well, at least that long, thirty years or more.

Q. I will ask you to state to the jury whether through the years you have written insurance for him? A. Yes, sir.

Q. Much or little? A. Oh, I would say we probably wrote fifty per cent of the insurance that he wrote through the years.

Q. Mr. Gruber, I will ask you if at any time Mr. Epstein ever talked with you about insuring any money that

he had on hand in his pawn establishment on Beale Street here in the City of Memphis? A. Yes, sir, he did (229).

* * *

Q. Do you remember how long ago that was? A. As well as I can remember, it was the latter part of '45.

Q. Latter part of '45. How do you fix that date? A. Well it so happens that my associate, Mr. Ziskind, (230) came back from the second World War about that time, just prior to this particular discussion I had with Mr. Epstein.

Q. What was the conversation? I want you to relate just what happened at that time? A. Well, I had been, of course, calling on our customers from time to time—I was doing double duty, I was trying to take care of the real estate business as well as our insurance business, and in this particular instance I was making some calls on Beale Street. I stopped in to see Mr. Epstein as I always did when I was in the neighborhood, and he asked me about insuring some money, and I said, "Well, I suppose we could take care of it". I asked him how much money was involved. He said it was a large sum of money. I said, "Well, I don't know, what would you call a large sum?" He said, "Well, oh, somewhere around one hundred and twenty-five or one hundred and fifty thousand dollars".

Q. Mr. Gruber, at that particular time when Mr. Epstein stated to you that he wanted to insure somewhere between a hundred and twenty-five and a hundred and fifty thousand dollars in cash, did you ask him where the cash was? A. I did (231).

Q. Did he tell you where the cash was? A. He told me it was in the safe, and showed me around this safe. However, I did not see the money.

Q. Didn't see some money? A. I did see some money, but couldn't tell how much because it was wrapped up in packages as it comes from the bank, and naturally, I don't know.

Q. What part of the safe was the money in, Mr. Gruber? A. As I remember, it was in the front part of the safe in some part of the cabinet.

Q. Is there a vault in the safe? A. There is a cabinet. There was then.

Q. And you say at that particular time he wanted to insure between one hundred twenty-five and one hundred and fifty thousand dollars in cash? What did you do about that? A. Well, I thought about it for a moment, and I said to Mr. Epstein, "I just don't believe that I can get our company to insure that much money". And we talked about it some. He asked me to determine the rate, and at that time I think I did, and called the office and found out what the rate was per thousand. It was quite excessive. And besides, I felt that I had no outlet for that type of insurance, because it was a much larger (232) sum of money than I knew our company would take in a pawn shop on Beale Street (233).

* * *

Cross Examination by Mr. Bernstein.

Q. Mr. Bradshaw, are you a C. P. A.? A. Yes, sir.

Q. Certified public accountant. How long have you been practicing public accounting? A. Since '49, 1949.

Q. Mr. Bradshaw, did you examine the books that I showed you at one time that Mr. Epstein had kept in his plane of business on Beale Street, his pawn shop business? A. Yes, sir, I examined the books—.

Q. For '49 through '52? A. I examined the books you brought me, yes, sir.

* * *

Q. Are those the books, Mr. Bradshaw? A. I believe so. However, if I remember, you just had one of them. I don't remember which one, of course.

Q. Would you look through them? (238.) A. Yes, sir.

Q. Just take a look there. A. Yes, sir, I think this is it.

Q. Thank you. I would like to read Regulation 111 to you of the Internal Revenue Service, Section 29.41-3—

> "It is recognized that no uniform method of accounting can be prescribed for all taxpayers. The law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his judgment best suited to his purpose. Each taxpayer is required by law to make a return of his true income. He must, there-

fore, maintain such accounting records as will enable him to do so."

Now, Mr. Bradshaw, I would like to ask you whether or not the records kept by Mr. Epstein for the years '49 through '52—one of those here is a partnership here—whether or not they adequately reflect his income under the requirements of this Internal Revenue regulation? A. Well, without any more examination, I couldn't accept that statement without qualification. Of course, I believe this system would be ample if—

Mr. Bernstein: That is all I want to know (239).

A. (Continuing)—If all the information were available.

Q. In other words, the system itself is adequate? A. I think so.

Q. Do you figure many income tax returns? A. Yes, sir.

Q. Isn't it a fact, Mr. Bradshaw, that most people on their income tax returns estimate such items as sales tax, tobacco tax, and so forth, that those are estimated items? A. Yes, sir.

Q. Mr. Bradshaw, would you tell me from your records there of Jaffe's Store at Osceola, whether or not Mr. Epstein made a gain or loss from that business in 1951 and 1952? A. For those years, '50, and '51 and '52, he had losses for those years.

Q. How much was the loss in '51? In '50—excuse me. A. Well, let's see, in the year '50 he had a loss of $127.48 plus he had one-half of the contributions, which would make a total of $179.98.

Q. Now, how about '51? A. In '51 his losses would be $1,364.11 (240).

Q. $1,364.11 loss? A. Yes, sir.

Q. In 1952? A. '52 it was $670.46.

Q. Were the daily records, insofar as the Jaffe Store is concerned and records that were turned over to you, were they kept in that store over there by Mr. Weiss, the other partner? A. Yes, sir, the daily sales and all were kept under him.

Q. Now, do the capital accounts as testified to by you correctly reflect Mr. Epstein's interest in that business? A. Yes, sir.

Mr. Bernstein: That is all. Thank you, sir (241).

* * *

LAWRENCE MASON,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you tell us your name, please? A. Lawrence Mason.

* * *

Q. What sort of work are you engaged in? A. I am a reporter for Dun & Bradstreet, Incorporated (268).

* * *

Q. And from being able to look through them there, do you say that that is the reports which you assembled under Mr. Barnett's direction and in due course sent out to some subscriber of Dun & Bradstreet? A. Yes, sir.

Mr. Vaden: I ask that be made Exhibit 1 to the witness Mason, if the Court please.

Mr. Hal Gerber: Are you asking that the whole package be made an exhibit?

Mr. Vaden: Yes, sir.

Mr. Fitzhugh: Yes, sir.

Mr. Hal Gerber: Do they contain financial statements?

Mr. Vaden: I don't know.

Mr. Hal Gerber: He has testified that these reports contain financial statements. I would like to know if they are contained in these reports.

The Witness: Yes, sir, here is one here, '44, and one for '45.

Mr. Hal Gerber: May it please Your Honor, we object to the introduction of these financial (275) statements at this time on the same grounds we objected to the finan-

cial statements from the bank which were introduced here, the ground being that the corpus has not been proved and at this time these statements are not admissible.

The Court: Objection overruled.

Mr. Vaden: Let her mark them 1 to Mason, please.

(Said photostatic copies of documents were accordingly marked as Collective Exhibit 1 to the testimony of Mr. Mason, and same will be found among the exhibits hereto.)

Mr. Vaden: I believe that is all.

Cross Examination by Mr. Will Gerber (276).

* * *

Q. I will ask you if in one of these statements—I am looking at the one here of November 23, '42, which reads as follows:

"On June 1, 1937, the sales business formerly conducted by William Epstein was sold to his father-in-law, J. P. Kirschner, for $10,400, and a note was given for that amount. Apparently no payment has been made on the note. It is understood purchases are made in the name of William Epstein and that bills are paid by him. This transfer is reported to have been made to conform with legislation relative to pawnbrokers and sales businesses."

Did Mr. Epstein tell you about that? A. I think so.

Q. Told you that certain legislation had been passed that caused the transfer of his business to his father-
(278) in-law, is that right? A. I think so. But my memory is no good, going back that far. If it is in my report, I think he told me.

Q. But no concealment about that, was there? A. No, sir.

Q. This is also included in the report of May 30, '39, the same statement I have just read in the other report? A. Right.

* * *

Q. Same statement is recorded on February 2, 1945, is that correct, Mr. Mason? A. Could be, I don't see it, but it could be.

Mr. Fitzhugh: May it please Your Honor, all those documents are in evidence now and counsel can later refer to them.

Mr. Will Gerber: I want to ask him about them, and ask him if Mr. Epstein told him about it, and I want to find out if there is any concealment about this so-called Kirschner business they are harping on; that is all.

Q. No concealment from Mr. Epstein about that at all, was there? (279) A. No, no.

Q. Where is the one for '47? You don't have one for '47, do you, Mr. Mason? A. If it is not in there, I don't have it.

Q. If it is not in there you did not get it. And, as far as the Kirschner business was concerned, there was no concealment about that Kirschner business, and as far as some of these returns were concerned, they were estimates, is that correct? A. That is correct.

* * *

Q. Mr. Epstein had very good credit? A. That is right.

Q. He could have gotten credit without giving you any reports at all, couldn't he? A. As far as I know, he could (280).

* * *

FRED P. CAWEIN,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you tell us your name, please, sir? A. Fred P. Cawein.

* * *

Q. And what do you do, sir? A. Well, for fifty-five years, until November 1st—I mean, until April 1st, I

was employed by Dun & Bradstreet. I retired on April 1st (281).

* * *

Q. Looking through there—is that right—you did see a report put out by you while you were a reporter? A. Yes, sir.

Q. Working for Dun & Bradstreet? A. Yes, sir.

Q. —To some subscriber for Dun & Bradstreet? A. Yes, sir.

Q. I would like to have that, please, sir.

Mr. Hal Gerber: We object to that. Are you offering that in evidence to be made an exhibit to his testimony, sir?

Mr. Vaden: I am getting ready to, as soon as I can put a brade there.

Mr. Hal Gerber: I want to object to it (284), because it is an extra-judicial statement and it is offered prior to proving the corpus delicti.

The Court: Objection overruled.

Mr. Hal Gerber: Same objection as the other statements.

The Court: Same ruling.

Mr. Vaden: I ask it be marked an exhibit to the witness Cawein.

(Said photostatic copy of document was accordingly marked as Exhibit 1 to the testimony of Mr. Cawein, and same will be found among the exhibits hereto.)

Mr. Vaden: I believe that is all. Thank you.

Mr. Will Gerber: Let's have that.

The Clerk: Is this report the same as Exhibit 21 to Davis? (285.)

* * *

Cross Examination by Mr. Will Gerber.

Q. This is an estimated statement, is it not? A. I think it says that, doesn't it?

Q. Doesn't it say here estimated? A. Yes, sir.

Q. Estimate, February 2nd, all in round numbers? A. That is right (286).

* * *

CHARLES D. JOHNSTON,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you state your name, sir? A. Charles D. Johnston.

* * *

Q. What sort of work do you do? A. I am a credit investigator for Dun & Bradstreet (287).

* * *

Q. Now, that one right there, does that have a report—?

Let's get it marked first, before you start talking about it.

The Marshal: Wait.

Mr. Vaden: Thank you, sir.

This is the one of Johnston's?

Mr. Hal Gerber: What year?

Mr. Vaden: March, '47.

Mr. Hal Gerber: Are you now offering it?

Mr. Vaden: I am going to ask it be marked (289), then I propose to quote from it and introduce it.

Mr. Hal Gerber: We wish to interpose the same objection, Your Honor, on the same grounds.

The Court: Objection overruled.

(Said photostatic copy of document was accordingly marked as Exhibit 1 to the testimony of Mr. Johnston, and same will be found among the exhibits hereto.)

* * *

Cross Examination by Mr. Will Gerber.

Q. This statement is an estimated statement, is it not, Mr. Johnston? A. I believe it shows as an estimated statement (290).

* * *

Q. Yes, sir. On the face of this statement here you made this statement—and I ask you if that is not correct:

"Interviewed March 6, 1947, William Epstein reported that Net Sales and pawn loans have been off considerably so far this year compared with the same months of last year. He attributes this to higher prices and less income on the part of customers."

Is that right?

A. If that is what it says there, that is what Epstein told me.

Mr. Will Gerber: I want him to look at this and see. Hand it to him, Mr. Sheriff.

Down at the bottom.

A. I see it; yes, sir.

Q. Also in that statement I think you have this statement to make:

"There is considerable cash on hand which is used in connection with the pawnbrokerage department."

Is that correct? Do you have that statement in there? (291.) A. I assume it is correct if you read it there.

Q. I want you to see. A. Yes, sir.

Q. I want you to see it? A. Yes, sir (292).

* * *

ROY M. SCOTT,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Hodges.

Q. You are Mr. Roy M. Scott? A. That is right.

Q. Mr. Scott, you are a certified public accountant and attorney here in Memphis, Tennessee, is that correct? A. Yes, sir (324).

* * *

Cross Examination by Mr. Bernstein.

Q. Mr. Scott, did I understand you to say you are a certified public accountant and an attorney? A. That is correct.

Q. How long have you been practicing public accounting? A. Since 1921.

Q. You state that you worked on the records of the Q. & S. Storage and the Q. & S. Realty Company, as well as the books and records of other companies of Mr. Epstein, is that correct? A. No, those are the only corporations I worked on in which he had any interest.

Q. Did you prepare the income tax returns for those corporations? A. Yes, sir, I did.

Q. I would like to ask you, Mr. Scott, whether or not Mr. Epstein ever asked you to change an entry on (327) any of the books you worked on, to delete any information whatsoever on any books? A. No.

* * *

Q. Mr. Scott, would you take a look at those books? Those are the books that I asked you to examine some time ago. I would like to ask you if those are the same books, and the ones that were kept for Mr. Epstein's loan office in the years '49 through '52? A. I am not familiar with the books kept by his loan office.

Q. I mean, if those are the same ones that were shown to you? A. These were shown to me some time ago, yes.

Q. I would like to read to you this Regulation 111, Section 29.41-3:

> "It is recognized that no uniform method of accounting can be prescribed for all taxpayers. The law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his opinion best suited to his purpose. Each taxpayer is required by law to make a return of his true income. He must, therefore, maintain such accounting (328) records as will enable him to do so."

I would like to ask you if the system established there is adequate under this regulation. A. I think so.

Q. Thank you, sir. Now, Mr. Scott, you do a good deal of auditing, do you not? A. Yes.

Q. If you are auditing a statement, checking a statement that has been given to a bank, and you establish in

your audit that certain assets are omitted from that statement, would it be good accounting practice to accept one asset—say, cash—as being correct, even though you knew other assets were omitted from that statement? Could you take part of it? Would that be consistent? A. No, I don't think so, not without verification.

Q. And, in other words, if part of the statement was inaccurate, all the statement is inaccurate—is that so? A. In my opinion, yes.

Q. Mr. Scott, do you file quite a few income tax returns? A. Quite a few.

Q. Do you find as a general rule that people estimate (329) on those returns sales tax, and so forth? A. Yes.

Q. Mr. Scott, do you know, or think you know, Mr. Epstein's general reputation for the qualities of honesty and integrity? A. Yes, sir, I do.

Q. Is it good? A. It is good.

Mr. Bernstein: Thank you, sir. That is all (330).

* * *

AUVERGNE BLAYLOCK,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden

Q. Will you tell us your name, please, sir? A. Auvergne Blaylock.

Q. You live here in Memphis? A. Yes, sir.

Q. And I will ask you whether or not you are engaged—I believe you are in the building business now? A. I have a building firm.

Q. And for a good number of years you practiced law here in Memphis? A. Yes, I still think I am a little lawyer, sir (364).

* * *

Q. Mr. Blaylock, how long have you known Mr. Epstein? A. I have known Mr. Epstein many, many years.

Q. Do you know or think you know his general reputation in this community among his friends, neighbors and acquaintances for the qualities of honesty and integrity? (380.) A. I think so.

Q. Is that reputation good or bad? A. I think it is very good (381).

* * *

JOHN T. DWYER,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Hodges.

Q. You are Mr. John T. Dwyer? A. Yes, sir.

Q. What is your occupation, Mr. Dwyer? A. Commissioner of Public Service, City of Memphis.

Q. Memphis, Tennessee? A. Yes, sir (399).

* * *

Cross Examination by Mr. Will Gerber.

Q. Mr. Dwyer, how long have you known Mr. Epstein? A. It dates back to when his boy was playing American Legion baseball, I think twenty or twenty-five years, Mr. Gerber.

Q. Your family and Mr. Epstein's family have always been very friendly? A. Some of my family that have known him as well as I have, yes, sir.

Q. You have known him during all that time? A. Just about every bit of it, yes, sir.

Q. I want to first ask you, Mr. Dwyer, if you know or think you know his general reputation in this community among his friends, neighbors, and acquaintances (404) for the qualities of honesty and integrity? A. Excellent, in my opinion.

Q. Excellent in your opinion. Mr. Dwyer, you were, prior to the time you became Commissioner of Fire and Police, were on the Police Department for quite a while, were you not? A. Yes, sir.

Q. When did you go on the Police Department? A. In the early part of 1940.

Q. I will ask you if in the course of your service on the Police Department you were sent to the school of the Federal Bureau of Investigation? A. Yes, sir; yes, sir.

Q. You attended that school. And I believe you were graduated at that school, is that right? A. Yes, sir.

Q. Mr. Dwyer, I will ask you if at any time you had occasion to work on what is known as the pawn squad of the City of Memphis? A. After my return from the service, I was assigned to the pawn detail on Beale Street, yes, sir.

Q. How long were you in the service? A. I was in the service forty-one months.

Q. Where did you serve? (405.) A. Two months in this country, then thirty-nine months overseas.

Q. Mr. Dwyer, you say that you were on the pawn squad in 1946? A. Yes, sir.

Q. About how many months? A. Three or four months. And then I was sent off to Washington.

Q. Did you have occasion while you were on the pawn squad to be in Mr. Epstein's place on Beale Street many or few times? A. Many times.

Q. I will ask you if you are familiar with a large safe that he has there on the pawn side of his establishment? A. Yes, sir, there are two of them there.

Q. I want to ask you, Mr. Dwyer, if in the course of your activity on the pawn squad, whether you have had occasion to see much or little money in that safe? A. In one of them, quite often considerable sums of money, yes, sir.

Q. You saw considerable sums of money? A. Yes, sir.

Q. Mr. Dwyer, did Mr. Epstein make any concealment (406) of this money? A. No, sir. We cautioned him, I think several of us have cautioned him about the fact that the door was open in there and that someone may come in there and hold the place up.

Q. In other words, anybody that walked in his establishment could see a considerable sum of money in the vault of that safe? A. Oh, yes, sir.

Q. He made no concealment of it? A. Most of the time I was there, the doors was open,, and of course I knew it was there because I had made some remarks about it.

Q. You made some remarks about it? A. Yes, sir.

Q. In other words, the money was so considerable that you made some remarks about it? A. It was quite a bit of money.

Q. It was quite a bit of money? A. Yes, sir (407).

* * *

HUBERT A. NORRIS,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Vaden.

Q. Will you tell the Court and jury your name and occupation, please, sir? A. Hubert A. Norris, Special Agent with the Intelligence Division of the Internal Revenue Service.

Q. Where are you stationed, Mr. Norris? A. Memphis, Tennessee (438).

* * *

Q. Go ahead, the conference of July 14, '55—that is the next conference in which Mr. Epstein was personally present? A. Yes, he was there. At that conference Mr. Epstein made quite a lengthy statement and explanations as to cash on hand the same years that Mr. Jones had already previously computed some figures, and in substance Mr. Epstein said that he had one hundred sixty-eight some-odd thousand dollars cash on hand at the beginning of 1948, which reduced to about—I believe to one hundred forty-six, speaking roughly now—there was (506) around one hundred fifty-five thousand dollars cash on hand at the beginning of this period as compared to seventeen thousand five hundred Mr. Jones had previously used (507).

* * *

A. I was going to add that even though he told me the largest amount of cash he had ever at any one time was twenty thousand dollars, I think it proper to say that he had told Mr. Huddleston he had between thirty and forty, though, a somewhat larger sum there (509).

* * *

Q. Regarding the property of which numerous witnesses have taken the stand here, and other investment property, tell us whether or not you secured information from Bernstein here, counsel, relative to the cost of that property? Did he furnish you information relative to that property? A. He furnished me with information as to the cost of some duplexes constructed by W. F. Jameson Construction Company, yes, sir.

Q. What was the cost of that property?

Mr. Will Gerber: If the Court please, we are going to object to introducing anything that Mr. Bernstein furnished in behalf of Jameson. Jameson has got the books, and Jameson is the man to testify about those records. Now, we are entitled to have the records here, if Your Honor please, and not any memorandum that Mr. Bernstein might have gotten off the records from Mr. Jameson for Mr. Norris or anybody else. We think the books (513) are the best evidence, and we think they ought to be in the court room, not a memorandum of Mr. Norris.

Mr. Hodges: Let me see the memorandum, Mr. Norris.

If Your Honor please, defense counsel has furnished a memorandum. In addition to that, he is accountant for this concern. And in addition to that, he has already written a memorandum.

Mr. Will Gerber: Here is what they are going to introduce. If they want to introduce it, introduce it by Bernstein, so we can cross-examine him, not by Norris. We might want to cross-examine him. The best evidence is the books. Mr. Bernstein is here—can put him on. They have subpoenaed Bernstein.

Q. Do you have the memorandum there? A. I have that.

Mr. Hodges: If the Court please, I want the witness to look at this, and I want to offer it in evidence.

Mr. Will Gerber: We object to any letter from Mr. Bernstein.

The Court: Let the Court understand what (514) this Bernstein matter is you are talking about.

Mr. Hodges: I would like the Court to see it. I think the Court can understand it more clearly upon looking there.

The Court: Just ask the witness the question, and let's see what it is exactly before the Court.

Q. Mr. Norris, tell us whether or not at your request did Mr. Bernstein, counsel sitting at the table right over here, Mr. Eugene Bernstein, furnished you information concerning the financial transactions of the defendant as to money paid for various pieces of property by the defendant William Epstein?

Mr. Will Gerber: To who?

Mr. Hodges: Mr. Norris.

Mr. Will Gerber: I mean to who did he pay the money?

Mr. Hodges: This memorandum sets out the amount of money that the defendant paid for various pieces of property.

Mr. Will Gerber: To who?

Mr. Hodges: The exact amount.

Mr. Will Gerber: To who?

Mr. Hodges: We don't care to who—might have bought it from John Doe, as far as we are (515) concerned.

Mr. Will Gerber: But I know—if Your Honor please, is that going to be competent, John Doe?

The Court: Are they about properties that have been testified already in this record?

Mr. Hodges: Yes, sir.

The Witness: Yes, sir.

The Court: And that purports to be summary—

Mr. Hodges: Yes, sir.

The Court: (Continuing) —of purchases and sales—

Mr. Hodges: Yes, sir.

The Court: (Continuing) —By defendant.

Mr. Will Gerber: That is not what it is, if Your Honor please. That is not what it is. I think Your Honor ought to have the facts about it.

Mr. Hodges: If the Court please, it is on the letterhead of Gerber, Rond and Gerber up here.

Mr. Will Gerber: If the Court please, let me—can I make a statement to Your Honor about this?

The Court: Yes.

Mr. Will Gerber: If you will permit me. A (516) man by the name of Jameson engaged as the Jameson Construction Company built certain houses. He built certain houses. He has the records about the construction of those houses. He has the records about what was paid to him by Mr. Epstein. He has all of the information.

Mr. Norris, in making this investigation, called upon these people to write him a letter. Mr. Bernstein's firm happened to be the accountants. They checked Mr. Jameson's books and records and merely wrote Mr. Norris a letter, just like the man in Minneapolis wrote him, but they brought him down here from Minneapolis to testify, brought him from Minneapolis. He wrote those people, they wrote back information, and they were subpoenaed to come down here and testify.

Now, we are asking that the proper witness be put on the stand to testify about it, Mr. Jameson, whom we can cross-examine. The bare figures don't mean anything at all. There are certain elements we have a right to ask him about.

The Court: Mr. Bernstein is here, if you want him to be cross-examined. You are talking about Mr. Eugene Bernstein—? (517.)

Mr. Will Gerber: Yes, sir.

The Court: Member of your firm?

Mr. Will Gerber: No, sir.

Mr. Hodges: Letterhead says Gerber, Rond and Gerber, Eugene Bernstein, tax consultant.

Mr. Will Gerber: Just a minute, if the Court please. We ask the Court to rule on the motion.

The Court: Just a minute. This was prepared by Mr. Bernstein, the accountant?

Mr. Will Gerber: That is right.

The Court: When was it furnished?

Mr. Will Gerber: When was it furnished?

The Court: Yes, sir.

Mr. Hodges: '55.

Mr. Will Gerber: '55, furnished in '55, and he has been subpoenaed to testify about it, and we have a right to examine him about those figures, if Your Honor please.

Mr. Vaden: You can put him on.

Mr. Will Gerber: You subpoenaed him.

Mr. Vaden: Got his letter.

Mr. Will Gerber: Independent of his letter, you subpoenaed him (518).

Mr. Hodges: Take it easy, Mr. Gerber.

Mr. Will Gerber: I want a ruling on it. I want you fellows to comply with the rules about this.

Mr. Fitzhugh: We want to comply with the orders of the Court.

Mr. Hodges: Your Honor, I think Your Honor should see this yourself.

The Court: If that is the memorandum furnished by Mr. Bernstein, the accountant, I think I know what it would be there, and there is probably something in this objection counsel makes at this time.

Mr. Hodges: It is not—I might add at this point, Your Honor—like to make this—I don't think Your Honor quite has the full picture. Mr. Bernstein has stationery as an accountant. That is a separate firm entirely. That is Bernstein, somebody else, and Snodgrass. This is supplied on the legal stationery of Gerber, Rond and Gerber.

Mr. Will Gerber: He happened to use the stationery—

The Court: And evidently he had the books (519) and records of Mr. Jameson over there—

Mr. Hodges: Mr. Jameson is not familiar with the information. This man is familiar with it. He furnished the information.

Mr. Will Gerber: If Your Honor please, that is an erroneous statement.

The Court: He says there are certain matters he desires to examine him about. I will sustain that objection. Sustain it (520).

* * *

Q. Were you requested by our office to prepare a chart setting out the income specified in the indictment? A. I did prepare such a chart.

Q. Do you have the chart? A. Yes, sir, there.

Mr. Will Gerber: I want to say this, if the Court please. Unless they conform with the testimony that has been offered, we are going to object to them.

Mr. Hodges: We are going to give you plenty of opportunity to stand up and object, don't you worry about that (523).

* * *

A. It is based strictly on the indictment figures.

The Court: It is based strictly on the indictment figures?

A. My testimony would explain those figures on there though.

The Court: I might explain to the jury at this time that this blown-up summary, so to speak, is admitted only for the assistance and convenience of your jurors in considering the evidence which it purports to summarize, you understand, and it is for that purpose that these so-called blown-up summaries are submitted. They are not evidence themselves, you understand. But, as I say, they are admitted in evidence only for your assistance and your convenience in considering the evidence which has gone before in this case, and which this summary purports to summarize, you understand. All right.

Mr. Hodges: Are you all through?

Mr. Will Gerber: No.

Mr. Hodges: All right, take your time.

Mr. Will Gerber: If the Court please, could we ask Your Honor to ask the jury to retire (525) for just a moment?

The Court: Yes, sir. Take them out, Mr. Marshal. Take the jury out.

(The jury thereupon retired from the court room, and the following occurred out of the presence and hearing of the jury:)

Mr. Will Gerber: Now, if Your Honor please, the summary that they are attempting to introduce by the witness—I would like Your Honor to look at it—shows taxes paid—whatever the chart says—income—income reported per the return.

Now, we have—get that, if Your Honor please, this is what they say is the income reported as per the return. They have not proved these figures as yet, if Your Honor please. And until they prove these figures, this is not competent.

Now, we ask—they are putting the cart before the horse—

The Court: We have heard forty-four (526) witnesses, I believe, haven't we?

Mr. Fitzhugh: Yes, sir.

The Court: (Continuing)—Who testified—

Mr. Will Gerber: No, they haven't testified to that. Until they have, there is nobody competent to testify to those figures.

Mr. Hal Gerber: Those witnesses testified to the whole prosecution period, may it please the Court.

The Court: One at a time; one at a time.

Mr. Fitzhugh: May it please Your Honor—

The Court: Now—

Mr. Will Gerber: There has been no testimony about —let him show the amount.

The Court: The amounts haven't been totalled, if that is what you mean. The amounts haven't been totalled.

Mr. Will Gerber: If Your Honor please, these figures have got to be allocated as to every year. He can't do

that. And he has probably got those charts—he has got it. He is putting the cart before the horse. Let him have the evidence on which this is based before he puts the chart in (527).

We object to it.

The Court: He has got numerous charts there. I don't know whether he is putting the cart before the horse, now. I think the District Attorney is—

Mr. Fitzhugh: That is the same type chart used in other tax cases.

Mr. Will Gerber: Never had a net worth case in his life.

Mr. Fitzhugh: Same type chart there.

Mr. Will Gerber: Never had one in his life.

Mr. Fitzhugh: Same type chart. And I want, if Your Honor please, to say he has set up a basis for this in an orderly method, and it will be connected up even to Mr. Gerber's satisfaction.

Mr. Will Gerber: We are going to object to it, and insist it be put in there like in other net worth cases, as I said.

The Court: The Court will let it in. Put it on the board.

Mr. Vaden: If the Court please, that is the same figures in the indictment.

Mr. Will Gerber: Hasn't been proved, either.

Mr. Vaden: We have read the indictment (528).

Mr. Will Gerber: What has it got to do with proof?

Mr. Vaden: That is right, you waived reading it.

Mr. Will Gerber: Does that mean we admit the charts because the indictment was not read?

* * * *

The Court: Bring the jury in here, Mr. Marshal. Tell them, Mr. Clerk. He is outside there. Bring them in.

(The jury thereupon returned to the court room, and the trial of the case was continued in the presence and hearing of the jury, as follows:)

(By Mr. Hodges:)

Q. Mr. Norris, I notice you have a chart there setting forth the income figures as reported by the defendant on his income tax return, and also showing the corrected net income as per the indictment.

Then go over that chart briefly, show the yearly differences. A. Yes, sir. These figures under this column here shows "Per Return," or based on the income tax returns (529) themselves. And here are the tax returns and the net income reported for the four years 1949 through 1952.

The figures appearing under there, where it says "Corrected Per Indictment" is the corrected net income that was derived at by reconstructing his earnings, or combined earnings of William and Pearl Epstein on the net worth determination.

The other column of figures headed "Additional Income," and that is per indictment, that is the amount each year charged in the indictment that was earned within these years, or in each of these years that was not reported.

I will read these figures for 1949. The tax return showed $20,105.62. It was corrected, $60,633.24, or an understatement or additional income of $40,527.62.

For 1950, they reported $37,142.46. It was corrected to $66,358.55, and an understatement of $29,216.09.

'51 was $16,526.59, corrected to $69,325.84, or addition of $52,799.25.

For '52, they reported $14,395.12. That was corrected to $38,792.41—additional income of $24,397.29.

The total net income reported by Mr. and Mrs. Epstein for these four years was $88,169.79. The (530) indictment charges there should have been $235,110.04, or a difference or under-reported amount of $146,940.25.

Q. Now, Mr. Norris, did you at our request prepare another chart showing the amount of taxes that the defendant paid on their income that he reported in the indictment as contrasted with the amount of taxes that he should have paid on his corrected income, as reflected by this chart? A. Yes, sir.

Mr. Hodges: May I have that chart? While we are doing that, sir, I would like to move the introduction of this chart over here.

(Said chart was accordingly marked as Exhibit 3 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.)

Mr. Will Gerber: We object to the introduction of the chart, if Your Honor please, because there is no evidence in the record to support it.

The Court: The objection is overruled (531).

* * *

This chart we say does not contain—or rather, the evidence offered here does not support this chart. And this chart must support the evidence that has been introduced.

And if Your Honor wants us to identify it, we will do that.

The Court: Mr. Norris, this chart in question, does that represent the detail on these figures you have already testified about from the other charts? Is that what they are?

A. It represents that, plus additional testimony that I would have to give to fill in all the figures.

Mr. Hal Gerber: Well, now, let him give it.

Mr. Will Gerber: If Your Honor please, we are entitled to have everybody in here. If there are computations on here that haven't been testified to, if Your Honor please, this chart is not competent.

The Court: Not necessary so, it is not. The witness says he must necessarily fill in some items (535).

* * *

The Court: All right, the Court has ruled it competent. Let it in.

Mr. Will Gerber: We note an exception (536).

* * *

The Court: I might explain, gentlemen, as to how we are to treat this chart.

Mr. Hodges: Let it be marked first, the next number.

(Said chart was accordingly marked as Exhibit 5 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.)

Mr. Will Gerber: Your Honor understands that we have objected to it on grounds that the chart contains information that has not been proven in this case, and we would like to have a ruling on that, if Your Honor please.

The Court: Well, the Court has already ruled this chart is competent.

Mr. Will Gerber: I want it for the benefit of the record.

The Court: Yes. Objection overruled.

Mr. Will Gerber: I just wanted to show they are objected to because this chart does not reflect the proper information.

The Court: Your objection is clearly in the record, and the Court's ruling is clearly in the record (537).

* * *

A. I would like to state first that the figures and information reflected on this chart have in the main been tesitfied to—

* * *

Mr. Will Gerber: We object to that statement, if Your Honor please, that the jury is here, and they know what has been testified to and what has not been testified to. We object to this witness saying that in the main this has been offered in evidence (539).

* * *

The Court: Go ahead. I will overrule the objection. Go ahead.

A. (Continuing) The information on here is based on the testimony of these some forty-seven people who have testified. There are some parts—well, I will tell you what parts they have testified to—that part that (540) has not been testified to. I think all but with the excep-

tion of Mrs. Epstein's investment in Lippman's Loan Office—

Mr. Will Gerber: We object. We have already stated that.

Mr. Hal Gerber: This testimony is argumentative, in that the witness now is undertaking to state what the witnesses in court already stated. This is argumentative, and we object to it.

The Court: Objection overruled.

Mr. Will Gerber: We note an exception.

A. (Continuing) I was going to state that the portion—there is some figures in here that haven't been testified to by witnesses, and those—

Mr. Will Gerber: On that statement, if Your Honor please, we object to the introduction of the chart at this time, if the Court please. He has already stated that there are some figures on there that have not been testified to, and we now object to the introduction of this chart (541).

* * *

The Court: That objection is overruled, then (542).

* * *

Q. Mr. Morris, just start back over the chart, now, and let's go into the details of it. You have explained quite clearly those computations here. Go back, quite clearly, now, and let's break the figures down. A. Well, the first figure in this computation, this is cash on hand at the close of 1948, or at the beginning of '49, and the end of each of the years on through 1952. Now, the first figure there for the beginning of '49 is twenty thousand dollars. That figure was arrived at by taking into consideration the financial statement furnished by Mr. Epstein to the U. P. Bank.

Q. That is, as he characterized, those inflated financial statements? A. Sir?

Q. The statements he characterized to you as inflated financial statements? A. Well, he referred to them as inflated. He made (566) certain specific reference to real estate listed in there at fair market value—

Mr. Hodges: O. K.

A. (Continuing) —Rather than cost. The statement that he gave the U. P. Bank that is closest to the end of 1948 was dated December 31, '46. My dealing with Mr. Epstein in this case embraced the years—the full calendar year of '48 through '52, and the years under indictment of '49 through '52, but I took the information shown on the December 31, '46, financial statement showing cash on hand and in the bank of $21,740.00. That was the largest amount of cash on hand and in the bank shown on any financial statement that he ever furnished the Manhattan Bank or Dun & Bradstreet prior to the beginning of this period, prior to the first of 1949.

Now, included in the $21,740.00 shown on that December 31, 1946, statement was $2,193.71 representing the amount of his bank account, the balance of his bank account at that date. However, I used it as the basis—the entire $21,740.00 as being on hand, as he said was on hand at the end of '46. Then, since it was the largest amount that he had ever specified during any of these years up until some time in '51, I used the figure (567) $21,740.00 as on hand at the close of '47, which would have been the beginning of 1948.

Now, he did furnish a financial statement in 1949 of $17,500.00. I took the difference between the $27,740.00—I took the approximate difference, and set that up as cash on hand at the end of 1948.

Q. You said twenty-seven thousand. I thought—I might be in error— A. $21,740.00.

Mr. Hodges: $21,740.00.

A. (Continuing) I took the difference from the December 31, '46, statement and the '49 statement, and arrived at how much cash he would have had on hand the end of '48, which would have been $20,000.00.

Now, in 1949, as of December 31, '49, his statement showed $17,500.00.

Q. This would be cash on hand December when—'47?

Mr. Fitzhugh: December 31st.

A. I believe I would like to look at those statements that the bank submitted.

Mr. Hodges: All right. Let me get them. They are in evidence here.

Here are the Dun & Bradstreet, if you want to refer to them to refresh your memory (568).

A. I would like to see those U. P. Bank statements.

Mr. Hodges: Here they are.

Mr. Vaden: Wait a minute.

Mr. Hodges: Excuse me.

Mr. Vaden: We have got an agreement on that January, '54; it doesn't go.

Mr. Hodges: I think this is all you want to see.

Mr. Vaden: And the comparatives—given him those.

Mr. Hodges: Here are the comparative sheets.

A. (Continuing) Now, the December 31st financial statement to the bank showed cash on hand, $17,500.00.

Mr. Will Gerber: I can't hear you, Mr. Norris, please, sir. Would you mind speaking just a little bit louder. I didn't hear.

A. (Continuing) I say the financial statement signed by Mr. Epstein he furnished the U. P. Bank as of December 31, 1949, specified cash on hand $17,500.00. That is this figure here.

Mr. Will Gerber: But that is as of January 1, '49, isn't it? You have got under there—(569).

A. (Continuing) As of December 31, '49. And that is the figure that I have used here.

In 1950, close of that year, he did not submit a financial statement to the bank, but he did submit one on January 1, 1952. I have it here. It showed cash on hand and in bank, $26,000.00. Now, at that time he had a balance of $5,387.21 on balance in the bank. That is an approximate difference between this figure and this figure in arriving at the seventeen, the approximate difference, which would be a drop of $500.00.

Q. You mean the financial statement listed one sum for cash on hand and cash in bank; you determined the

amount he had of cash in bank and subtracted that from the financial statement to give the cash on hand? A. I determined the amount that he had on balance in the bank at that date, and subtracted the figure in arriving at the sixteen five.

Q. The difference would naturally be cash on hand—

Mr. Will Gerber: How do you say you figure that, Mr. Norris? Pardon.

A. You take the 1949 statement which showed $17,500.00. You determine he showed $26,000.00 on the January 1, 1952 statement. After eliminating the money on balance in the bank in his account, the difference, then (570), $16,524.18—The seventeen is the approximate difference between these two.

Now, for 1952 the $16,000.00 was arrived at in generally the same way. He had furnished a statement to the bank. I don't know if that one is here. But this defendant on January 1, 1954, specified $15,000.00, cash. Now, I took the approximate difference between—if the end of '53 was shown up here it would have been $15,000.00—so the difference between the fifteen and this sixteen, I arrive at the sixteen thousand dollars even. He submitted statements every other year. If '53 were shown—

Now, those same figures were discussed with Mr. Epstein at the last conference I attended with him. They were also discussed and were in close agreement to those prepared by his accountant, Mr. Jones, for the same period, until Mr. Jones' figures were later changed. Mr. Jones' first computations were practically in agreement with these figures here, except he ended up with eighteen thousand dollars cash on hand as compared to mine had dropped to sixteen thousand dollars (571).

* * *

A. (Continuing) The next type of asset included under the stocks and securities is Q. S. Storage and Transfer Company, fifty-two shares of stock, par value—at a cost of fifty-two hundred dollars. It was purchased back in 1946. It was all owned at the close of '48 and '49, and disposed of in 1950.

Q. S. Realty Company, one hundred twenty-five shares of stock, par value, was acquired back in '46. It cost twelve thousand five hundred. And that was the balance of—that was his investment in that stock during all the years under indictment. No change.

Fairchild Engine and Airplane Corporation, five hundred shares acquired 1945, and still in the possession of Mr. Epstein or still owned by Mr. Epstein at the end of 1952. That stock cost three thousand dollars. And that is the amount used each of the years. No change in that.

Hawthorne Builders, Incorporated. He acquired some capital stock in July of '50 for eight thousand seven hundred fifty dollars.

Mr. Will Gerber: I don't want to disconcert him, but we want to make an objection here. There has been nothing in the record here about Hawthorne Builders by any witness, and unless it (580) is going to be connected up, if Your Honor please, we object to it.

A. (Continuing) Could I see the income tax returns for 1950 and '51?

Mr. Will Gerber: We assume that if he reads them the tax return, he assumes that the tax return is correct. Otherwise, if Your Honor please, we ask for the introduction of the best evidence.

The Court: What is that particular item? I did not understand what the item is.

Mr. Will Gerber: There has been no proof in the record as to this particular item he is talking about.

The Court: What is the item. That is what I want to know.

Mr. Will Gerber: Hawthorne Builders.

Mr. Hodges: Mr. Morris has testified, for clarity's sake, Your Honor, that that item is listed in defendant's income tax—

Mr. Will Gerber: I am asking, for the record, if he assumes that what he has reported in his income tax return is correct. Otherwise, we want the proof on it (581).

The Court: I don't know how he has handled it.

Tell us how you handled it, Mr. Norris?

Mr. Will Gerber: Well, he knows.

A. Well, actually, my evidence—my proof was obtained from a business associate of Mr. Attorney Bernstein, Mr. Irving Katz. He had the records, gave me figures and the cost of those shares of stock. I have it in letter form, report form, from Mr. Katz. And that is one of the attorneys that I understand that—

Q. Is this letter one coming from Mr. Bernstein's partner, Mr. Katz?

Mr. Will Gerber: That is the same thing we had previously, if Your Honor please. If he says he accepts the item in the income tax as correct, we have no objection.

The Court: Well, isn't it six of one and half a dozen of another?

Mr. Will Gerber: Well, it is not as far as we are concerned, if Your Honor please. If he says it is correct, it is all right. If it is not, we want the best evidence.

The Court: Well, are you going on the theory that it is correct? (582.)

A. I will make this statement, and I believe it is both fair to the Government and the defendant. There is no contention about anything on Mr. Epstein's income tax returns except Epstein's loan office and his sales business. His real estate transactions, and dividends and partnership earnings, and income of that type, I still would state that I find it to be fairly accurate.

* * *

A. (Continuing) —Well, that is—is it permissible, now, to proceed with—

Mr. Hodges: Yes, sir, go right ahead.

A. In Hawthorne Builders, he invested eighty-seven hundred fifty dollars in 1950, and then in '51 he disposed of it. Rather, he transferred that sum he invested in that to another firm. So that asset appeared in '50, and disappeared in 1951.

He bought a Berclair Baptist Church bond for one hundred dollars in '51. He still had it the end of that year. And 1952.

He bought ten shares Prescott Company, Incorporated, stock.

Mr. Bernstein: What company is that? (583.)

* * *

Mr. Will Gerber: Do you agree that they are correct?

A. I feel like my figures are correct, yes, sir.

Mr. Will Gerber: Well are our figures correct? Otherwise we want the proof on them.

A. Well, I haven't seen your figures as to this.

Mr. Will Gerber: I mean, so far as the income tax returns are concerned. Have you checked it with the income tax returns?

A. Yes. Yes, sir.

Mr. Will Gerber: Are they correct with the income tax?

A. No, sir.

Mr. Will Gerber: Sir?

A. No, sir.

Mr. Will Gerber: Well, let's have the testimony about it.

A. The main thing I found incorrect about income tax returns of Mr. Epstein pertain to Epstein's Loan Office and sales or receipts or income reported for Epstein's Loan Office. The facts that I assembled proved that—at least to me, that all of the business receipts were not reported on Epstein's income—(593).

Mr. Will Gerber: We object to that statement. It is just purely a conclusion, if Your Honor please. He has offered no proof in support of it, absolutely without proof in support. It is a conclusion.

Mr. Vaden: If you will—

Mr. Will Gerber: A conclusion of the witness, incompetent and irrelevant.

The Court: I understood you to ask him the question.

Mr. Will Gerber: But I did not ask him to give me any conclusions about it. Asked him to give me proof,

if Your Honor please, not any conclusions. Certainly it is not going to be imputed to me I asked him to give incompetent evidence. I am not that silly (594).

* * *

Mr. Hodges: Do the jurors—we are going to another chart. Do you all care to have those little charts showing that last figure?

May I have that chart, Mr. Norris, if you have got another one, so I can let counsel over (599) here examine it?

(Chart examined by counsel.)

Mr. Will Gerber: If Your Honor please, for the benefit of the record, we want to object to the introduction of this chart for the same reasons as the other chart, because all of the business investments that are taken into consideration in this chart have not been proved, all the real estate transactions have not been proved, and we of course deny the accuracy.

The Court: Which ones have not been proven?

Mr. Will Gerber: Well, if Your Honor please, if you want a list of them, I will give them to you.

Mr. Bernstein: If Your Honor please, the following pieces of property have not been introduced in evidence:

The building of property at 746-748 Montgomery.

The building of property at 750-752 Montgomery by Frank Jameson.

The building of property at 231-233 Silverage, 235-237 Silverage, by Mr. W. J. Jameson.

The building of property on Wabash Street (600) and the building of property on Gold Street by Mr. W. F. Jameson.

The advancements to Miss Rae Epstein.

The investment account and the close-out in various years of Dwight Homes, a partnership.

The Court: Investment account in what?

Mr. Bernstein: Dwight Homes, Your Honor, a partnership.

The investment account and close-out in Charjean Homes, a partnership.

The '52 investment account in Q. S. Realty Company.

The close-out of the Prescott Corporation.

The Court: What corporation?

Mr. Bernstein: Prescott Corporation.

The close-out of the loan balances in '51 and '52 in Prescott Corporation.

The investment accounts in Hawthorne Builders.

Capital accounts for '49 through '52 in Lippman's Loan Office.

The partnership with Mr. Maynard Epstein.

The inventories, the furniture and fixtures in the store; that is, the Epstein's Loan Office.

And that is all at this time (601).

The Court: Well, now, I am not sure, but the Court I think recalls evidence with respect to several of those items. But I do recall that some few of them, particularly the Jameson items mentioned, were discussed here yesterday, and the Government offered an exhibit furnished Mr. Norris by your Mr. Bernstein—.

Mr. Will Gerber: Not on behalf of Mr. Epstein; on behalf of Jameson, if Your Honor please. He has offered it on behalf of Epstein.

The Court: Just a moment. The Court sustained the defense objection to that particular document which relates to a number of these items you have on your list.

And I don't know what the Government has in mind. It was suggested that Mr. Bernstein should be called to the stand. He has been summoned here as a witness. And it was suggested that maybe others who might be available should probably be offered in person, so that defense counsel might have an opportunity to cross-examine him about matters said to be in dispute.

The Court has no way of knowing about that, or what the Government has in mind (602).

I will say here that the testimony of this witness should not be interrupted at this time, but those items should be taken into consideration, if there is no proof

of them before this jury, in considering these summaries, these computations.

I don't know how the Government how the Government has in mind handling that, and don't pretend to tell them about it. I am just, in an effort to be helpful here, suggesting that they are items which must be considered in this overall picture.

Mr. Will Gerber: Of course Your Honor understands that customarily in these cases that all this proof upon which these charts are predicated on is supposed to be put on before the charts.

The Court: I recognize that, and I think the District Attorney recognized it. And I think that is what he had in mind. But these are rather difficult cases to put on, and it takes a little time, and everybody has got to be patient.

The summary you are proposing to introduce at this time I think is competent at this time (603).

The summary shown on this exhibit, or computations, however, you refer to them, are merely explanatory, as I have tried to point out there.

And I want to impress on the jury again it is for that purpose only that they are used in this type of a case. They themselves are not evidence, you understand. They are for your assistance and your convenience in considering the sworn testimony that you have heard and will hear before this case is closed.

All right.

Mr. Vaden: Now, if the Court please, for the record, I think that Your Honor of course has ruled on it, but it is true that Mr. Norris has testified, in our opinion, about all these matters complained about. But, nevertheless, as to the Jameson matter, it is true that he did rely upon the letter written to him by Mr. Bernstein, to some extent, I am sure. And that is the Jameson matter. On yesterday morning when it came up—of course, we were relying on the letter written by Mr. Bernstein, and Your Honor sustained the objection—we sent the (604) Deputy Marshal to try to find Mr. Jameson, and he is a construction man, had gone to Hughes, Arkansas. We sent the

Deputy Marshal to Hughes, Arkansas. He had left there, gone to Pine Bluff. And he had left there, gone some place. And we understand he will be in some time after midnight tonight. We will have a man there after midnight at his home, and will do the best we can.

Mr. Will Gerber: To clear up, Your Honor, I am entitled to make this statement.

A week or ten days ago, I came over here and told Mr. Warner Hodges that Mr. Jameson was in possession of records and Mr. Jameson would have to be subpoenaed, because Mr. Bernstein did not have the records. All he did was write a letter setting forth information Mr. Norris wanted.

I want the Court to know that. It has been a week or ten days ago I talked to Mr. Hodges about subpoenaing Mr. Jameson.

The Court: All right, are we ready to proceed, gentlemen?

Mr. Hodges: Yes, I would like to have this chart marked the next number (605).

* * *

Q. I see. O. K. All right. Do you have that next chart showing comparison of income reported and deductions claimed by the defendant and Epstein's Loan Office? A. Will you state that question again?

Q. I have in mind a chart portraying a comparison of income reported and claim for deductions by Epstein's Loan Office during two distinct periods of time, for '45 through '48, and from '49 to '52 (614). A. Yes, I have a chart of that type there.

Q. Let me have that chart.

(Chart examined by counsel.)

Mr. Will Gerber: If Your Honor please, this is a chart that is headed "Average income of Epstein's Loan Office for periods 1945 to '48, 1949 to '52." We insist, if Your Honor please, that he ought to be required to bring the figures out for all those years and give full proof of the whole story, instead of just bunching a lot of figures in here together without giving any proof on it.

The Court: He has undertaken to do that to some extent in connection with these charts, and I assume he is—

Mr. Will Gerber: We just can't take his conclusions about it.

The Court: (Continuing) —And I assume he has figures to back up these charts.

Have you, Mr. Norris, there?

A. Yes, sir.

The Court: And, of course, you will have an opportunity to cross-examine him about all these things (615).

Mr. Hodges: If the Court please, he is merely attempting to show here the source of that unreported income there for the four year period of $146,940.25.

Mr. Will Gerber: That does not show any source itself—.

Mr. Hodges: Just a minute. I am addressing the Court, Mr. Gerber.

And all figures on this chart which are average figures are taken from figures that are in the record. Mr. Gerber has two accountants sitting there by him writing down everything that is said, going over this, and if we make any mistake about this, I am sure they will bring it out.

The Court: I understand. But if counsel desires the witness to give the supporting testimony about it as we go along here, we will require him to do it.

Mr. Will Gerber: I am asking Your Honor, in fairness don't you think they ought to prove these figures?

The Court: Mr. Norris, as you refer to these items, you might give the supporting evidence (616) as you go along.

A. Yes, sir.

Mr. Hodges: Mark it the next number.

(Said chart was accordingly marked as Exhibit 9 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.) (617.)

* * *

Mr. Will Gerber: We object to the statement that he has just made, that that is susceptible of proof. He knows nothing in the world about it. He never talked to J. P. Kirschner in his life. He knows nothing in the world about J. P. Kirschner. He is relating the rankest kind of hearsay and conclusions. If he has got witnesses he can put on the stand to that effect, we have no objection to it at all. But we object to him making that statement, if Your Honor please. He knows nothing about it.

Q. Mr. Norris, tell the Court and jury how you know that. Just state to the jury—. A. I began that statement by saying that admissions or statements of Mr. Epstein, which were corroborated by evidence—

Mr. Hodges: All right.

A. (Continuing) —Bore out the facts that I have related so far.

Q. When did Mr. Epstein say he retired? A. That was discussed at the final conference to some extent on July 14th by his counsel, and some time prior to that on numerous occasions with his counsel, and the subject was already mutually agreed on and accepted by (618) the Government as well as Mr. Epstein and his counsel at the July 14th conference.

Mr. Will Gerber: We are disputing the right, if Your Honor please, the right of this witness to draw conclusions about it. But let him tell us where he got the information. If the information is competent, we have no objection to it.

The Court: All right.

Mr. Will Gerber: We are admitting this about the Kirschner Store—no dispute about it. But we want this witness to stay in the record.

The Court: He has made the statement that Mr. Kirschner had nothing to do with the operation of that store. As I understand, that is the conclusion of the witness to which you are objecting. He says further that he is basing that —

Mr. Will Gerber: If he will say—

The Court: (Continuing) —On what defendant himself told him.

Mr. Will Gerber: Well, that is all right.

The Court: And what defendant's counsel told him. (619.)

Mr. Will Gerber: That is all right.

The Court: And you say that you don't dispute it, in effect, as I understand it now. Do you still object to it?

Mr. Will Gerber: The only thing I said, if Your Honor please, let him state where he got his information, instead of drawing any conclusion. We are not—

The Court: You are withdrawing the objection to that?

Mr. Will Gerber: Oh, of course we are not objecting about—we are objecting about the manner of the testimony. Let him tell us where he got his information. That is all. We want it to go into the record that way.

Mr. Fitzhugh: May it please Your Honor, there is just constant interruptions. Counsel will have ample time to cross-examine this witness.

Mr. Will Gerber: If Your Honor please, I don't think the District Attorney ought to tell me how to try my lawsuit. I am going to object every time I think it necessary to object. Trying to get facts in the lawsuit. Not trying to do (620) anything except trying to represent my client. That is all.

Q. All right, go ahead, Mr. Norris. A. Well, that business that I discussed was operated under the name J. P. Kirschner. Income tax returns filed from '37 up through April 30, '49, and which are in evidence, are filed in the name of J. P. Kirschner.

Now, the profits, so Mr. Epstein says, and the entire business was his, and the money and the profits belonged to him, and they were reported under the name of J. P. Kirschner and income taxes paid under the J. P. Kirschner.

He admitted that the profits should have been reported on his income tax return filed during those periods, and that it would naturally put him in a higher tax bracket.

Mr. Will Gerber: What is that last, now? What was that last statement you just made?

A. I said he admitted that the profits should have been reported on his individual income tax returns, and that therefore would have placed him in a higher tax bracket. The Government actually failed to collect some thirty something thousand dollars taxes during this total period and due to the manner in which the (621) J. P. Kirschner profits were reported.

Now, in April of '49, the store was then openly taken in as a part of Epstein's Loan Office. J. P. Kirschner's name was dispensed with. The door was opened into his pawn and loan business, and it operated openly as his entire operation, the pawn and loan business and the sales store, under the name of Epstein's Loan Office.

Income tax returns were filed by Mr. Epstein and his wife for 1949, '50, '51 and '52, and on those returns he accounted for the profits of Epstein's Loan Office, which included the sales store. Prior to that time, he had only been reporting on his returns the profits for the pawn and loan business. The sales store profits were reported by J. P. Kirschner.

Now, the figures on this chart—Mr. Jones, I wonder if you would move this big chart or turn it over?

The Marshal: Do you want to take it down?

A. Just turn it over. Too many figures up there.

The information shown here is based entirely on the income tax returns filed by Mr. Epstein for 1945, '46 and '47 and '48, as compared to the returns filed by him for 1949, '50, '51 and '52. These figures represent the average gross receipts, the average cost of goods sold (622) for these two distinct periods, the average gross profits, the average expenses, and average net profit each year.

Now, during the four year period, 1945 through '48, he reported average gross receipts each of those years for just the pawn and loan business only of $215,382.14. His average yearly cost of goods sold amounted to $169,043.11, each of those four years. The gross profit for each of those four years amounted to $46,339.03. Still talking about just that is pawn and loan business. The expenses each year, $23,762.42. The net profit each year averaged $22,576.61. These brackets here means that is subtracted

from that to get the gross profits, and expenses subtracted from net profits give gross profits.

Q. When you say just pawn and loan business, you mean you have excluded the defendant's sales store operated under the name of J. P. Kirschner, that is not included in those figures there from '45 to '48? A. He did not include it on his tax returns for those four years.

Mr. Hodges: I understand that.

A. (Continuing) The sales store operations are not in any of these figures at all.

Mr. Hodges: Yes.. (623).

A. (Continuing) On April 30, '49, he operated the pawn loan business and also took over the sales store. During 1949, '50, '51 and '52, his average gross receipts from the entire operations each year averaged $226,316.27. His average cost of goods sold amounted to $181,501.25. His average gross profit was $44,815.02. Expenses were $36,711.71. His net profit each of those years, $8,103.31. That was a difference of $14,473.30 less than he had been reporting each of the four previous years when he did not even include the sales store profits.

Q. Then that chart shows he reported about three times as much net profit on his income tax returns for the years '45 through '48, when the sales store was filed on separately under the name of J. P. Kirschner, than he reported when all three of them were filed together,—in other words, the profits on all three of them were reported on one return, is that correct, approximately three times as much? A. Yes, sir, that is correct. He reported about three times as much more profits in each of the previous years than he did—just the pawn and loan business, than he did when they are all part of the business and the sales store operated openly under his name.

Q. And that does not include—in other words (624), if the profits of the J. P. Kirschner Sales Store had been included in that figure for '45 to '49, naturally the profits would have been even more than three times that much? A. Yes, sir, there were considerable profits from that sales store.

Q. That is right, considerable profit from the J. P. Kirschner Store, which defendant admitted was his, and if they had been reported the net profit would have been considerably higher than that, instead of twenty-two thousand, is that correct? A. That is correct.

Q. Did you make a similar comparison of the information reflected on his income tax returns and also the tax returns filed in the name of J. P. Kirschner for the two distinct four year periods? A. Yes, sir, I made a computation similar to this that also included the sales store profits.

Q. Do you have a chart that would more clearly focus that?

(Chart examined by counsel.)

Mr. Hodges: Let it be marked the next number.

(Said chart was accordingly marked as (625) Exhibit 10 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.)

Q. I forgot one thing, Mr. Norris, I wanted to ask yesterday. That jogged my memory. I inadvertently demoted you yesterday by asking you if you were head of the office here. Just so everybody will know you are not demoted, will you explain that? A. Well, I was that until the policy changed. We have so few men here, actually we don't have any head of the Memphis office now. We work directly out of Nashville.

Mr. Hodges: I see.

A. (Continuing) That is due to having so few men. It is a sub-office.

Q. And the official nomenclature, then, that is a branch office, not a regional office, as Memphis is not—they normally in the nomenclature do not designate anybody head of the office, so that is the reason you are not head of the office? A. That is right. We all work directly out of Nashville, what few there are here.

Q. Exhibit 10 shows average combined income of Epstein's Loan Office and Sales Store for the same two (626) periods we have been talking about, that is '45 to '48, and '49 to '52. Explain that chart to the jury. A.

This information is similar to that shown on the other chart. Now, since Mr. Epstein acknowledged that the J. P. Kirschner Sales Store was actually his store and the profits were his profits during all the period of its existence, I took the tax return—took into consideration the information on the tax returns filed for the periods 1945—that is, the four year period through 1948 under the name of J. P. Kirschner that accounted for the sales store. I also took Mr. Epstein's tax return and information as to Epstein's Loan Office shown on those returns, combined the information, to arrive at the average gross receipts.

Q. Just so there is no doubt here, you have both businesses, '45 to '48, there were two separate returns—there were two separate returns filed during those periods—that is, return of J. P. Kirschner and return for Epstein, is that correct? A. Epstein, that is right.

Q. All right. And for the period, then, of '49 through '52, there was only one return filed during the period. All the income from the sales store, J. P. Kirschner Sales Store was no longer filed, and the gross (627) receipts from that sales store were listed in Epstein's return for '49 through '52, is that correct? A. That is correct.

Q. All right, go ahead. A. This is headed "Both businesses." Actually, it pertains to Epstein's Loan Office, which is pawn and loan office, and J. P. Kirschner Sales Store, for these periods. Those two businesses operated under those two distinct names and separate tax returns accounting for the business were filed.

Over here, both of those operations—or rather, the sales store and pawn business and loan business was combined and operated under the name of Epstein's Loan Office. One return was filed by Mr. Epstein accounting for this business.

The average gross receipts reported on the J. P. Kirschner return and also Mr. Epstein's return for each of the four years, '45 through '48, amounted to $301,072.95. The cost of goods sold, $219,568.94. Gross profits, $81,504.01. Expenses, $46,828.93. Net profit realized each of these four years, average net profit reported was $34,675.08.

Now, the same operations over here reported by Mr. Epstein during the four years '49 through '52, has (628) gross receipts of $226,316.27. Cost of goods sold, $181,501.25. Gross profit, $44,815.02. Expenses, $36,711.71. And net profit, $8,103.31, which is about $26,571.77 each of the four years less than had been reported each of the four previous years.

Q. In other words, the total profits reported during the period of '45 through '48 was actually more than one hundred thousand dollars greater than the total net profit reported from the period of time '49 through '52, because this is your average yearly figure, and multiplying this figure times four would make total net profit reported from 1945 to 1948 over one hundred thousand dollars more than the net profit reported from 1949 through '52, is that right? A. Well, based on that average—

Mr. Hodges: That is what I say.

A. (Continuing) —Almost it is over two hundred thousand dollars.

Q. That is based on returns filed by defendant, is that right? A. Yes, sir.

Q. Did defendant, in your discussions with him and his counsel, ever state or contend that his business operations decreased, or that there was any substantial (629) economic change in conditions that took place during the indictment years—that is, the years '49 through '52, as compared to the prior four years from '45 through '48? A. No, sir, they made no such contentiton, or he made no such contention, or any of counsel.

Mr. Will Gerber: If Your Honor please, I am awfully sorry, but—

The Court: I will sustain that objection—sustain that.

Q. Tell us whether or not you discussed business conditions with the defendant, William Epstein, sitting right back over there, as to the periods of time involved, and tell us what he told you and statements that he made concerning that.

Mr. Will Gerber: I would like for him to tell us when those statements were made, too. A. I had the

two conferences in which Mr. Epstein was present. There were two conferences at which Mr. Epstein was present, and that I was there, and without getting out all voluminous notes covering those conferences, he did not say or claim that there was any difference in the business operations or economic conditions, that he had any more losses or any more profits, or anything (630) along that line, during these four years and the prior; that the business was operated the same as had been operated, with the exception he did away with the J. P. Kirschner and openly handled it all under his name.

Q. Did you inquire if he had any explanation as to the difference—the huge difference shown here? Did you inquire of him did he have any explanation as to that? A. I don't think I showed this computation to Mr. Epstein. I asked him to—gave him the opportunity, if he wanted to explain the sum two hundred thousand dollars difference money that he had spent over and above what he had reported, and I told him that was such a huge sum—

Mr. Will Gerber: We object to this colloquy, if Your Honor please, because he admits there was no conversation between him and Mr. Epstein about the question Mr. Hodges raised here—no discussion about it.

Q. Well, during all these conferences which began in November, 1954, and were held with you and by you personally until September of '55, did defendant, William Epstein over there, or any of his counsel here (631), ever claim at any time—

Mr. Will Gerber: Just a moment.

Mr. Hodges: Just a moment, Mr. Gerber.

Q. (Continuing) —That his income at any time ever had any huge drop like that?

Mr. Will Gerber: Just a moment, if Your Honor please. The best evidence about this is the stateemnt itself. They took a statement from Mr. Epstein in Nashville—Let them produce the statement.

Mr. Hodges: If the Court please—

Mr. Will Gerber: That is the best evidence, if Your Honor please.

Mr. Hodges: If Your Honor please, defense counsel raised tremendous objection, and Your Honor sustained the objection. That is when we wanted to go into that conference where the defendant was not present. We have not gone into conferences where defendant was not present, due to the objection made by Mr. Gerber and that Your Honor sustained that objection. Now he wants us to go into that conference.

Mr. Will Gerber: I am not saying—

Mr. Hodges: Just a minute.

Mr. Will Gerber: Wait a minute (632).

Mr. Hodges: Under the net worth method of proving income, I think it is incumbent upon the Government to prove they followed, then, any and all leads that defendant may have given them as to offering any possible explanation of any unreported income. I am therefore asking this question to show that he offered no such explanation.

Mr. Will Gerber: If Your Honor please—

The Court: Well, this witness has said that he offered no explanation—and negative, more or less—

Mr. Will Gerber: If Your Honor please, the only thing—

The Court: Does that end the matter, gentlemen?

Mr. Hodges: I think so.

Mr. Will Gerber: No. Only thing we say, we are not objecting to any statement Mr. Epstein made to Mr. Norris or Mr. Wallwork at any time. Now, on this particular question, the only time he ever talked to Mr. Epstein was in November, '54, and July, '55. And I am correct about that. Now, Mr. Epstein made a written statement in (633) Nashville. And we say that is the best evidence of what Mr. Epstein or anybody else said on the question he now has before the Court.

The Court: The witness has answered that he did not make any statement along the lines the District Attorney inquired.

Mr. Will Gerber: We say he never made any statement along the line—

The Court: And that ought to end that, gentlemen.

Mr. Will Gerber: Why, certainly.

Mr. Hodges: I just want the jury to know—

The Court: That ought to end that.

Q. Would you explain briefly what further information you may have in this connection as to prior earnings in corroboration of these figures? Do you have another chart that would go into his statement to you about cash on hand and his net worth at the beginning of this period? I have in mind in particular a chart that would show all previous or prior earnings of this defendant. That is what I particularly have in mind. A. Well, in my first meeting with Mr. Epstein, we discussed his net worth at the beginning of '48 and other years following that, and he made statements to me about (634) cash on hand and amounts that he had on hand along at that time. And we talked about this large difference of close to two hundred thousand dollars over and above the net income that he had reported during this period that I was investigating. And in order to verify and corroborate any statements that Mr. Epstein made to me, with particular reference to cash on hand and money that was spent during this period as to where it came from, whether it was earned previously and saved, accumulated, or whether it was earnings within the period—naturally, if it was not earned within the period it would not necessarily be taxable—it certainly would not be taxable for purposes of this lawsuit—

Mr. Hodges: Surely.

A. (Continuing) So in order to make that verification and corroboration of his statement, I first wanted to see whether or not his business was an adequate source to produce this income during the four year period.

The evidence shows it was more than adequate the four prior years to produce the income, the difference amounting to two hundred thousand dollars.

I wanted to go further than that in corroborating what he said and determine about cash on hand, and see if it was possible for him to have any such huge sum of cash on hand that would account for the two hundred (635) thousand dollars not reported but spent during the period I was

investigating. To do that, I used not only the financial statements that he had given over the period of years to the Manhattan Bank and also Dun & Bradstreet—I go back to his filing records. I go back as far as his 1920 and see what kind of income he has been earning and what kind of income he has been reporting.

I also take into consideration any income reported by his wife during—as far back as she had a filing record.

I also consider all income earned or reported under the name of J. P. Kirschner. I consider that as his earnings, even though it was reported under the name of J. P. Kirschner, because I know that that fund, that money could have been available to him, as that was his statement.

So I group all that type money together on up to the end of 1948, to see how much they had been reporting, how much had been reported.

And I then went to see—took into account what happened to that money prior to 1949.

And I do have a chart that bears on that results of that computation.

Q. Let's have that chart, Mr. Norris (636). A. I think his Honor told me—before we leave this chart here—that I might give some details as to where my information came from, and I will—

Q. Now, let me ask you just one question there. All the information, as I understand it, on this chart here, which is the average combined income of the Epstein's Loan Office and the Sales Store from these two periods, came solely off of the income tax returns filed by Epstein and filed by Kirschner, is that correct? A. That is correct. I can give—

Q. You have merely taken gross receipts listed, and cost of goods sold, averaged them out, got that average gross profit, averaged out the expenses for the four years, got the average expenses for the four years, and then got the average net profit for the four year period; is that what you have done? A. Yes, sir.

Mr. Hodges: Your Honor, unless—

The Court: I would say—

Mr. Will Gerber: What is up?

The Court: They are not insisting that he go into more detail, if that is what you are addressing the Court on the subject.

Q. All right, let me have the— (637)

The Court: Suppose—we are about ready for our mid-morning recess. Let them see that next chart there.

(Chart examined by counsel.)

(Recess.)

Mr. Hodges: Will you mark that?

(Said chart was accordingly marked as Exhibit 11 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.)

Q. Mr. Norris, I want to hand you—put on the board, rather, Exhibit 11, which shows the total available income of defendant Epstein and wife, Pearl Epstein, and—

Mr. Norris, you have already given a brief explanation as to what Exhibit 11 is, and I will go over it now in detail showing application of available income for William Epstein, Pearl Epstein and J. P. Kirschner for the periods listed in the chart there. A. This is headed up "Income per filing record" for these three periods.

Q. You mean for all income tax returns filed by those three people with the Collector? (638.) A. And taxes paid.

Mr. Hodges: That is right.

A. Now, in some of these years, '20 to 1948, particularly in the back years—years prior to 1937—original income tax returns have long been destroyed. The Internal Revenue Service maintains a record on everybody that files a return, as to the amount of income taxes they pay any year as far as 1913, when the income tax law started. That record showing amount of taxes paid is the basis of some of these older years as to the amount of income a person reported. And the regulations will state—for instance, in the year 1919, that a man had to file a return if he made three thousand dollars or more. I think I am correct on the three thousand dollars, but it could be twenty-five hundred; I think it is three thousand dollars for that particular year, I mean. Then, if a man, we will say, made just three thousand, he would not necessarily

have had to have filed a return. But if he made over three thousand, he would have been required to file a return.

By examining some of these years—and some of these years returns were not filed, so naturally there would be no filing record, or no record as to taxes paid.

However, in the case of Mr. Epstein for the years (639) in which no returns were filed, I still gave him the benefit of the doubt as making or earning—

Mr. Will Gerber: We object to any doubt they gave him. We want the Government to take full credit for everything they are entitled to. Don't give defendant the doubt about anything. Take full credit—

The Court: That is just an expression here I think the witness is using, Mr. Gerber.

Mr. Hodges: So there will be—I think a little more than an expression, Your Honor.

Q. In other words, by way of illustration, if a man could make up to three thousand dollars without having to file a return, and the record shows William Epstein for any one particular year did not have to file a return, you included in that amount of money there which on the chart totals $320,848.50—you did include for the year where there was no record of him having filed a return the sum of $2,999.99, since that is the maximum he could have made and not have filed a return; is that correct, Mr. Norris? A. Well, I think actually I gave him credit—credited him with having earned three thousand dollars that year (640).

* * *

Q. Do these financial statements furnished banks or credit bureaus list cash on hand as to various periods of time? A. Yes, sir.

Q. Do you have a chart that would set out and show what those financial statements disclosed? A. Yes, sir.

Q. May I have that one, please?

Mr. Hal Gerber. May it please Your Honor, we wish to object to the introduction of this chart on the same grounds previously stated when the financial statements themselves were offered. That is, they have not yet been corroborated. The corpus has not been proven (647).

They are extra-judicial statements under the law required to be corroborated. And for that reason we object to the introduction of this chart.

The Court: The objection is overruled. When you speak of an extra-judicial statement, usually you have reference to a statement made by your opponent, don't you?

Mr. Hal Gerber: I think the law is clear, Your Honor, that financial statements that have been given by the defendant are construed to be extra-judicial statements.

The Court: These are not statements—they are merely summaries. And the Court has already said they are not even evidence several times

Mr. Fitzhugh: Your Honor, we wish to—

Mr. Hal Gerber: Your Honor is speaking of the charts, not bank statements.

Mr. Will Gerber: That is what this is based on, Your Honor.

Mr. Fitzhugh: Bank statements are admissions against evidence.

The Court: Well, the objection is overruled.

(Said chart was accordingly marked (648) as Exhibit 12 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.) (649.)

* * *

Q. Well, do you have a chart there setting forth the net worth of defendant as per his financial statements furnished for the middle two years of the indictment? I notice the two financial statements there of December 31, 1949, which, of course, is the beginning of 1950, and statement there of January 1, 1952, which carried it through '51. That will encompass exactly the two years, that is, the middle two years, '50 and '51.

Do you have a chart showing the gain in net worth as listed by the defendant's statements for those two years?

A. Yes, sir.

Mr. Hodges: Let me have that one, please.

(Chart examined by counsel.)

Mr. Hal Gerber: We wish to make the same objection, Your Honor.

The Court: Same ruling.

Mr. Hodges: Let's mark it the next number (653).

(Said chart was accordingly marked as Exhibit 13 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.) (654.)

* * *

Q. Well, I know you may have touched upon it briefly a while ago, but tell us whether or not you (658) went over the amounts of cash shown on these financial statements with defendant Epstein over there, and as to what he said about them. A. Well, I believe that the jury and the Court already are familiar with what I said as to the discussion we had on November 19, 1954, about cash on hand, that the highest figure he had was twenty thousand dollars; and he did not know how much it was when he last counted it; he did not know how much it was at the time I talked with him, but he thought it was —and I am speaking from memory—six or eight thousand dollars. But then, the next time I talked with him over at Nashville—or, rather, the next time that he talked when I was present, he then said that at the beginning of 1948 that he had in his safe twenty-two thousand dollars cash on hand that belonged to him in one pile or one stack in the vault. There was another stack of currency, cash, small bills, of sixty-three thousand dollars in that vault that belonged to his wife. There was a third stack of cash in that same vault of eighty-two thousand some-odd dollars, representing all the profits of the J. P. Kirschner Store after payment of income taxes and after paying for some personal inventory. That three distinct stacks and piles of cash (659) currency amounting to one hundred sixty-eight some-odd thousand dollars on hand at the beginning of 1948, which was considerable more than the $21,740.00 that had been included in my figures as on hand at that time. And it was also over one hundred thousand dollars more than Mr. Jones had included in his figures prior to the June 21st and July 14th, '55, two meetings that took place in Nashville.

In discussion—it getting back to the first answer on this question he asked about the financial statements, in this—and the questioning was done by Mr. G. M. Wallwork in Nashville—I was present—and it was not quite clear to me about this cash, and I gave Mr. Wallwork a note, and he asked it. The note requested him to ask Mr. Epstein why none of this cash was ever listed on any of his financial statements or any of the financial statements given the bank prior to April 30th, '49, when the Kirschner Store went out of existence. He had already stated, and he stated at that time that he did not consider the Kirschner eighty-two some-odd thousand dollars as belonging to him until the store actually was taken over by him in 1949.

Therefore, he saved and accumulated those profits in (660) the safe. And after it was taken over on April 30th, 1949, he then realized definitely that the money belonged to him, and he then was going to spend it.

I did ask Mr.—and I believe I asked this question myself: Why, then, was not some of the eighty-two thousand dollars listed on financial statements submitted subsequent to the time he realized the money really belonged to him? He stated that he had just formed the habit, he guessed, of leaving it off, and he just left it off on those later statements.

He said the sixty-three thousand, or words to that effect, belonging to his wife, was not listed on the statement because the statement pertained to his assets and his liabilities.

And the amount of cash that he said was in the vault at that time was some twenty-two thousand dollars—was fairly close to the $21,740.00 that I had used in my figures. And I previously had given all my figures to Mr. Jones.

* * *

A. Well, Mr. Bernstein—I don't know just exactly when he was employed, but I do know it was shortly prior (661) to June 21, 1955, when he did appear over there, along with Mr. Jones, and new powers of attorney were filed auhorizing jointly Mr. Jones and Mr. Bernstein to represent Mr. Epstein and also Mrs. Epstein (662).

* * *

Q. Tell us whether or not in the '54 income tax return of the defendant, William Epstein, under the depreciation schedule, each interest—

Mr. Will Gerber: We object to any reference to the '54 return. The '54 return is not in issue here. We are here for '49, '50, '51 and '52, if Your Honor please. And we object to it.

The Court: Well, how about that, Mr. Hodges? Are we interested in the '54 return there?

Mr. Hodges: Yes, sir, the '54 return is in evidence, and we are looking at it to the extent of showing that the cost of these various pieces of real property—just a moment, Mr. Gerber, I am not through—the cost of these various pieces of real property, which he says we have not proven, are listed on that return under the depreciation, and we are certainly entitled to—why, of course, over the signature of the defendant—and Mr. Norris— (681) the Government—he is verifying that. We say no further proof is required on those items. We have the figures there; we say it is all right, and we accept those figures as listed by him on that '54 tax return.

Mr. Gerber here—his whole proposition is that we have to drag the trial out another day—

* * *

Mr. Fitzhugh: I believe, Your honor, these (682) are proving depreciation and matters of that kind by defendant's own statements.

Mr. Hodges: Of necessity—

The Court: That is what I say; I don't see where there is any controversy about that, or where there should be.

Mr. Vaden: If the Court please, may I make this statement—?

The Court: —But we can't go into—

Mr. Will Gerber: I don't know what they are trying to do, if Your Honor please. If they are trying to keep a man like Jameson who built some houses for him off the witness stand—I don't see how this income tax can aid

them at all. That is what they are trying to do, trying to get away from putting somebody on the stand (683).

* * *

The Court: Was Mr. Epstein present at that time?

A. He was present at the last conference on July 14th. We dealt with the over-all practical result of my figures and their figures. And the difference—the (695) main difference was cash on hand, and we talked more about cash on hand—

The Court: And Jones had under consideration, or he had included in his figures—

Mr. Will Gerber: I would like for him to take the stand, if Your Honor please.

The Court: (Continuing) —These figures in this report for '54, is that right?

A. Yes, sir, every item is mentioned here, with one exception, Dwight Homes. We did not even include that at all. If he spent any money—

The Court: Well, then, in view of that bit of testimony, the figures are clearly competent, Mr. Gerber (696).

* * *

Mr. Will Gerber: I want him to be comfortable.

Mr. Norris, you tell the Court in Nashville we had a discussion about any of that property?

A. I told the Court—

* * *

Mr. Will Gerber: I want you to tell the Court whether there was any conversation of any kind on July 14th about any specific property in this matter, any real estate of any kind?

A. I told his Honor that at that conference your figures—and they were your figures then, because you were there, and they were still presenting them by Mr. Jones—and my figures were in—well, we had discussed this, and we had discussed the general over-all picture of the entire case, including all assets and (697) liabilities and the result; we did not cover any specific item.

Mr. Will Gerber: That is all I want to know.

A. (Continuing) We all knew and agreed that the figures were identical with the exception of cash on hand and some other items included in his—or defendant's computations that offset the unreported item—

Mr. Will Gerber: Did you tell us now that there was no conversation of any kind about the construction of these houses by Mr. Jameson, no specific conversation of any kind?

A. I don't say that we made a specific discussion of every piece of property, or every asset involved. That had already been tended to prior to that time.

Mr. Will Gerber: You are talking about lump figures, now, and not specific conversation. I am asking you whether there was any conversation on July 14th about any specific property—the Montgomery property, or any property at all—any discussion about it?

A. Let me see if Mr. Epstein didn't talk some about that.

Mr. Fitzhugh: May it please Your Honor, it (698) seems clear to me that where the whole discussion was had in Mr. Epstein's presence of the over-all picture, which included cash, specific properties, and Mr. Norris states positively that there was no disagreement about anything but the cash, and there was of necessity some discussion—

The Court: The witness is trying to find something additional here.

A. (Continuing) This is Mr. Epstein talking. "I do recall—"

Mr. Will Gerber: What are you reading from?

A. I am reading from some notes that were made of his interview on July 14th over at Nashville.

* * *

A. (Continuing) This is transcript of what he said.

Mr. Will Gerber: That is exactly what I want to find out, whether notes or whether (699) transcript. Why didn't you tell us it was a transcript at first?

A. You hadn't asked that question.

Mr. Will Gerber: I know; you said notes.

A. They are still notes.

Mr. Will Gerber: I asked you whether you took a statement. Why didn't you tell us at first you had a transcript? Now, tell us what the transcript shows about Jameson.

Mr. Hodges: Go ahead. You don't have to worry about his argument.

A. This is still written report of what Mr. Epstein said over at Nashville.

Mr. Will Gerber: Not any notes?

A. They are notes to me.

Mr. Will Gerber: They are?

A. They are my notes.

Mr. Will Gerber: Tell us what he said in those notes about Jameson building those houses for him?

A. Mr. Epstein said: "I don't recall specifically when I started using it." He is talking about this big hoard of cash. "I built some duplexes and invested in other investments." (700).

He was asked: "You have been accumulating this about twelve years. Was the first time you started using it when you started building duplexes? Could you have used some prior?"

"Might have used some prior to that time."

Mr. Fitzhugh: May it please Your Honor, all of this goes to the weight to be attached to the testimony, anyway, I respectfully suggest.

A. (Continuing) —Here is some more talk about that. "I just can't recall any specific occasion—" that is, when he was spending some of that cash. "I built houses, using some money to pay for houses."

He said a little better than—he was asked: "How did you acquire those mortgage notes, a little better than twenty thousand dollars?" That is Mr. Epstein answering: "I bought a piece of property for ten thousand dollars and sold it in 1951 for twenty thousand—four thousand dollars a house, and took practically all notes for that."

And he was asked: "Those weren t notes you bought for cash?" And the defendant here: "I bought houses." "When did you buy the houses?" "1951." "Did you go to the fund to get that money?" "I think I borrowed the money." (701).

He said: "I took cash when I built the duplexes in 1952, too, cash when we remodeled our home in '50 and '51. I think we needed some extra money in the business in 1949. Might have used some of it in the business in '50 and '51."

Of course—

Mr. Will Gerber: I just want him to find in that statement any reference to Jameson or any piece of property of any kind—any specific piece of property.

A. (Continuing) I can also, Your Honor, refer to their computation, including all those assets and liabilities, the cost value of them that was presented at the June 21st conference, and also re-discussed at the July 14th conference, when Mr. Epstein was present.

The Court: All right, anything further?

The witness has testified that at two separate conferences, one in July, and one in June and one in July, he and other representatives of the Government sought to reconcile certain computations with the defendant and defendant's counsel, the defendant being present, and that each side presented their computations, which included the item of the properties being inquired (702) about at this time, referred to as the so-called Jameson houses. Now, if that happened—and the witness makes the positive statement about it—I think the Government is entitled to put in this tax return for the year 1954, as it reflects the values on those houses, and the Court will permit them to do it.

Mr. Will Gerber: And we want to note an exception, if Your Honor please.

The Court: Bring the jury back, Mr. Marshal. The witness has testified that both sides had substantially the same figures and discussed them in those conferences.

(The jury thereupon returned to the court room, and the trial of the case was continued in the presence and hearing of the jury, as follows:)

(By Mr. Hodges:)

Q. I will now hand you the '54 income tax return for William and Pearl Epstein, signed by William Epstein, which has previously been introduced as Exhibit 32 for identification only to Shelby— (703).

Mr. Vaden: Sheley.

Q. (Continuing) —Sheley, and ask you to look there where real estate is listed, for depreciation—I mean, cost —further over—his duplexes.

Mr. Will Gerber: Your Honor understands that now in the presence of the jury we are again objecting to the introduction of anyone other than Mr. Jameson, if they are going to prove the Jameson property.

The Court: All right, let the record show the objection is overruled.

Mr. Will Gerber: Note an exception (704).

* * *

Q. Now, as to some other items there, tell us whether or not you looked over defendant's books when the defendant was present, and Bernstein—counsel Eugene Bernstein at the table was there in his office? Did you do that?

Mr. Will Gerber: Do what? I did not hear that.

Q. (Continuing)—As to some other items that have been mentioned, other than as on those returns, other than on that return.

Mr. Will Gerber: I still don't get what he is trying to do, if Your Honor please.

A. If I understand the question, you asked me did I examine some books and records of some partnerships or third party records that were in Mr. Bernstein's office?

Q. Wait a minute, Mr. Norris. I am not talking about any third party records. I am talking about records of this defendant who is on trial today. If they are partnerships—a partnership of which he is a member of the

partnership—that type records (705). A. Yes, there were some records examined in the offices of Mr. Bernstein.

Mr. Hodges: All right.

A. (Continuing)—Pertaining to partnerships.

Mr. Hodges: All right.

A. (Continuing) —In which Mr. Epstein or his wife had an interest.

Q. All right. Would you cover those items just very briefly? A. I have transcripts in the file of information obtained from those records.

Mr. Will Gerber: Of course, Your Honor, we are again voicing an objection. The man with the original records can come in this court room and testify. He can be subpoenaed by the Government. And they are now introducing records now to avoid putting this case on like it should be put on. He wants to testify that he looked at certain books and records, not Mr. Epstein's—in the presence of someone else.

The Court: Is that it?

Mr. Hodges: A partnership.

The Court: Investment account of Dwight Homes, and the Charjean—? (706.)

Mr. Hodges: Yes, sir.

The Court: Partnership?

A. It pertains to some partnerships in which Mr. Epstein or his wife have an interest.

Mr. Will Gerber: There are several other partnerships involved in this.

Mr. Vaden: That is right. Still, they are in partners, just like any other partners.

Mr. Will Gerber: Your Honor, let me get myself straight. We are not objecting—we want the record to show—on this information. But we are insisting that it be put on regularly. We are insisting that the witness who has possession of the records and knows about them, and not this witness who says he went and looked at something—.

Mr. Hodges: If Your Honor please, that is nothing more than defendant's records, just like any other records that were furnished Mr. Norris here.

The Court: Are they in evidence? Are these their records—?

Mr. Will Gerber: They are partnership records of other people.

The Court: (Continuing)—That this (707) witness saw in the accountant's office?

Mr. Hodges: In the attorney's office—Eugene Bernstein's office.

Mr. Vaden: Mr. Epstein's records.

Mr. Hodges: Mr. Epstein's records.

Mr. Fitzhugh: Furnished by him.

Mr. Will Gerber: What is that about Mr. Epstein?

Mr. Vaden: If they are partnerships, they are Mr. Epstein's records as much as any other records. Why can't he say what is on them?

Mr. Will Gerber: I am not arguing about that. I am saying the witness who has the records ought to be put on to testify about the records, and that is my objection.

Mr. Vaden: He is still trying to get Mr. Bernstein on the stand.

The Court: Well, you have got franscripts of the records—is that what you say you have there, now?

A. Yes, sir.

Mr. Will Gerber: He subpoenaed the man with the books, if the Court please. And now he comes in here and wants to read off what he got (708) off them. Why don't they put him on?

Mr. Fitzhugh: May it please Your Honor—

Mr. Hodges: Just a minute, Your Honor. May I approach the bench just a minute, so there won't be any question about this?

Mr. Fitzhugh: May I make a statement? That is records furnished by Mr. Epstein's attorney—his own records—his own partnerships. They were turned over and examined by the witness. And now we say this is certainly competent evidence. We feel like we have developed the case properly. That is a legal matter for Mr. Gerber to bring up. But we feel like this is entirely com-

petent. And he has been questioned about how he arrived at these figures—and from Mr. Epstein's own books.

Mr. Hodges: And so there will be no doubt about, Your Honor, all the defendant's—

The Court: Just a minute, gentlemen. Mr. Marshal, take the jury out again.

(The jury thereupon retired from the court room, and the following occurred out of the presence and hearing of the jury:) (709)

The Court: Now, gentlemen, let's settle all these questions while the jury is out at this time. Let's settle them all.

Mr. Vaden: May I make a statement, if Your Honor please?

The Court: Yes, sir.

Mr. Vaden: In this cause, it has been testified to by this witness that he made an examination of certain records of all kinds of papers, in conjunction with Mr. Hunter Jones and some people—Mr. Huddleston, and so forth, relative to the tax liability of the defendant.

It develops also that Mr. Bernstein, sitting here as an attorney in the case, and who is a member of an accounting firm as well as an attorney, the firm of Bernstein, Snodgrass, and—what is that—Katz and Jacobs—whatever it is—and that there were certain partnership records and other records furnished for inspection of Government agents down in Mr. Bernstein's office, and Mr. Norris went down there and looked at them and made certain transcript, just like been testified to here by any other Government agents who examines books. (710) in any kind of tax case—transcripts from the books—that is all he did. He is now prepared to say what he saw on the defendant's books in which the defendant was in partnership—member of the partnership, at the time he looked.

Now, we are not going to—at least, we are keeping out of getting in the position of subpoenaeing the defendant's books in here, in which the defendant was a member of the partnership, as we don't think we should be put in that position.

And we could not say that before this jury, because we don't want to do anything to cause an error in this case. And we don't want to be in a position of making defendant bring his books in here—I know of the rule—and testify for the Government, but this man saw the books—

The Court: Well, I don't think you can do that.

Mr. Will Gerber: Let me just say—

The Court: (Continuing)—You couldn't require defendant to give evidence against himself, (711) of course.

Mr. Vaden: No.

The Court: And you do object to producing, though, the originals of those records, I take it, at this time?

Mr. Will Gerber: Let me say this, Your Honor, in answer to Mr. Vaden. I think I should have my say about it. He has subpoenaed all these people here. These people are prepared to testify about these. There is nobody claiming about testifying in this case, except Mr. Vaden, who is not offered as a witness. He wants to say we can go out to the Baptist Hospital and look at records and then can testify about it. He can't do it, if Your Honor please. He can't go out and say he saw the record and that is in the record.

Mr. Vaden: If I sue the Baptist Hospital, I could testify what the records said; and that is all this is.

The Court: Let's see—

Mr. Will Gerber: He would have to bring the record in.

The Court: Mr. Norris, you went to (712) Mr. Bernstein's office. Was it the law office or accounting office?

A. Well, I understand it is a law office, and then there is some of his stationery says accounting office.

The Court: Well, which particular place did you go to?

A. It is the same place.

The Court: It is the same place. Where is that?

A. In the Sterick Building.

The Court: Well, he exhibited these records with respect to these partnership matters we have under discussion here?

A. Yes, sir. And I would like to make it clear for you, since Mr. Huddleston goes down there first—that is before I go with him, and he deals with Mr. Bernstein and the records, and makes transcripts of those partnership records at the time he is down there, and then those papers are turned over to me, and I go down there and I look some more at them, convince myself that Mr. Huddleston's figures are accurate, and I discuss it with Mr. Bernstein, and I ask him, in order for me to have some things we can look over again and bring back to the office, if he will cover that in a letter as to what (713) those capital accounts in the various partnerships reflect with respect to Mr. Epstein.

The Court: Did he do that?

A. Yes, sir.

The Court: Is that what you are proposing to introduce at this time?

A. Well, we have the letter that he reported—

Mr. Bernstein: If Your Honor please—

A. (Continuing) And I also have my work sheets.

The Court: Just a minute. What is that?

A. I say we have report he furnished me in the file. I also have transcript obtained from the books and records myself.

The Court: Here is what—. But there are certain technical rules of evidence that everyone is obliged to respect. If Mr. Bernstein furnished you records in this case voluntarily as the accountant representing this defendant, that is one thing. If you went down there and made a transcript of the records and have them here, and the District Attorney is proposing to offer that in evidence, that is another thing.

Now, if he has a record bearing on the subject under discussion furnished him by (714) Mr. Bernstein, I think that would be clearly competent.

Mr. Vaden: Yes, sir.

Mr. Hodges: Certainly.

Mr. Bernstein: If Your Honor please—

The Court: Yes, sir.

Mr. Bernstein: I am the subject of the controversy at this time. I would like to say, first of all, my accounting office and law office is not the same place. I practice law using the address 515 Sterick Building, and accounting at 513. Now, these records—

Mr. Vaden: You mean next door?

Mr. Bernstein: Well, close, Mr. Vaden.

Mr. Will Gerber: Yes, next door.

Mr. Bernstein: Now, these records which are in controversy here are records that are worked on there by Mr. Israel Katz. I have never worked on the particular records Mr. Norris is speaking of. I did write him a letter about the Jameson matter, but these partnerships were taken care of by Mr. Israel Katz, who is associated with me in accounting.

The Court: He is saying he has a letter (715) there furnished by your accounting firm to Mr. Norris.

Dig it out, if you have got it.

Mr. Hodges: Yes, sir, we have got it. But he is correct, Your Honor. He did discuss these partnerships there with Mr. Katz. Now, Mr. Bernstein—whether with Mr. Katz or Mr. Bernstein is immaterial, if Your Honor please.

Mr. Will Gerber: Now, Your Honor has previously ruled this was not competent. Your Honor ruled yesterday or the day before this was not competent. Is Your Honor reversing yourself?

Mr. Fitzhugh: This is going to—

The Court: The Court has just this moment gotten the facts about it.

Mr. Vaden: Just like his Honor to see this. Will Your Honor read this while the jury is out. Here are two letters furnished—

Mr. Hodges: Here is both of them.

The Court: I don't have to read them.

Mr. Vaden: Let's read them, Your Honor, so Your Honor will just know before the jury gets back (716).

Thank you.

The Court: Yes, the letter itself was the accounting business.

Mr. Hodges: The letter itself is on the accounting business, that is what I say.

Mr. Vaden: That is what it was. We propose to introduce by this witness in conjunction with the testimony just now given, letter dated February 3, '55, on the letterhead of Bernstein, Snodgrass, Katz and Jacobs, accountants and auditors in the Sterick Building, Eugene Bernstein—so forth, so forth—regular embossed letterhead.

"Mr. H. A. Norris, Intelligence Division, Internal Revenue, 212 Falls Building, Memphis, Tennessee.

"Dear Mr. Norris:

"In compliance with your request, I am submitting the information as requested by you regarding various holdings of Mr. William Epstein and wife, Pearl Epstein. These figures were taken from books of account, worksheets, and other records of the companies listed below, which have been and are now in my possession (717).

"(a) Prescott Company, Inc.:

"Cost of stock—"

He has got the date of acquisition, how many shares, who owns it, how much William and Pearl Epstein paid in, when they bought it, and so on about it. It shows capital account in the Prescott Corporation.

"(b) Charjean Homes, (A partnership):

"Balance in Capital Accounts—William and Pearl Epstein—"

—Dates, amounts—

Are those the matters Mr. Bernstein read this morning?

Mr. Vaden: Yes, sir, that is correct.

The Court: —And the Court asked him—

Mr. Will Gerber: Yes, sir, insisted the wit esses be put on to prove it.

The Court: I recall those particular items.

Mr. Vaden: This goes through all of them.

Now, then, that is the Katz letter, which Mr. Norris will testify to.

Now, so far as Mr. Jameson is concerned—the general proposition—this is the letterhead of Gerber, Rond and Gerber, signed by Eugene (718) Bernstein, whose name is also on the letterhead, tax counsel, to Mr. Norris, U. S. Treasury Department, dated January 31, 1955, four days from the February 3rd letter, in which it is stated—Falls Building—

> "Please find enclosed the report you requested on the transactions between William Epstein and W. F. Jameson Construction Company—"

The Court: Well, there is no use discussing it any further, Mr. Vaden. It is clearly competent upon the letter.

Mr. Vaden: And, in addition to that, he set forth his part of it.

Now, that is all we have been trying to get in all the time.

The Court: Well, it took us a long time to find out just what it is.

Mr. Vaden: And just for the record, so we will all know, I don't know Mr. Jameson—I don't know anything about any other houses Mr. Gerber has. I have never talked to Mr. Jameson, and counsel hasn't talked to Mr. Jameson. But this is the record we are trying to get in—the letter (719).

* * *

(The jury thereupon returned to the court room, and the trial of the case was continued in the presence and hearing of the jury, as follows:)

The Court: All right, I believe you have something there.

(By Mr. Hodges:)

Q. Mr. Norris, I will now hand you a letter from Eugene Bernstein dated January 31, 1955.

Let me get it marked first as an exhibit.

Mr. Will Gerber: Of course, Your Honor understands that in the presence of the jury we again object to the manner in which the evidence is being produced. We have no objection to the ultimate proof that is to be introduced by this (720) evidence, but we say it ought to be done by the people keeping the records.

The Court: Well, this is information furnished by counsel in the case. It is clearly competent.

(Said letter dated January 31, 1955, was accordingly marked as Exhibit 14 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.)

Q. Now, Exhibit 14, which is that letter, contains certain information attached there to it. Would you please read off that information—the letter first, and then the information attached to it, Mr. Norris?

The Court: Furnished by the defendant's accountant, I should have said, more accurately, one of them, and one by the attorney, I believe; here.

A. This letter is January 31, 1955, on the letterhead of law office, Gerber, Rond and Gerber, Tax Counsel—Eugene Bernstein, is one of the names listed on there.

Mr. Will Gerber: Who is the other one?

A. Who is the letter from? From Attorney Bernstein. Some of the others listed are William Gerber, Charles A. (721) Rond, Hal Gerber, Marshall L. Gerber.

Mr. Will Gerber: I just wanted you to read that last name. That is all.

A. It is addressed to me.

"Please find enclosed the report you requested on the transactions between William Epstein and W. F. Jameson Construction Company. I have analyzed the deposit slips, files and cash journal of W. F. Jame-

son Construction Company and you will find enclosed an analysis of my findings.

"I believe that the enclosed statement is correct, however, it is possible that some cash credits which were hard to identify are credited against the wrong piece of property. On the whole, however, I believe the overall cost to be correct. From my search of the records, I find that the only amount owed by Mr. Epstein to Mr. Jameson at the end of 1952 is $5,898.00.

"I hope that the enclosed statements will clarify this matter for you.

"Very truly yours, Eugene Bernstein."

It has "Enclosures: Analysis, Comments." (722).

This is headed up: - "William Epstein—Duplex Transactions with W. F. Jameson—Analysis.

"746-48, 750-52 Montgomery. Contract for $11,736.00. Paid as follows:

$6,735.00, November 4, '52, cash.
$5,006.00, November 4, '52, check.
Total, $11,735.00."

He has out by the side of one of the payments: "See Comment Number 1."

"231-33, 235-37, 183-85 Silverage. Contract as follows:

2 at 5710—1 at 5898.
The two at 5710, $11,420.00.
The other one 5898.
Total $17,318.00, per the contract.
Paid as follows:
$6,000.00, July 24, '52—Cash.
$3,000.00, September 11, '52—Cash.
$2,420.00, September 26, '52—Cash.
$898.00, January 12, '52—Check.
$5,000.00, January 12, '53, Cash.
Total, $17,318.00.

"Wabash Street contract, $5,864.00, paid as follows: (723)

$7,295.00, November 25, '52—Cash.

Less, $1,431.00—gives net of $5,864.00."

Asterisks—"1,431.00 was loaned to the owner of and applied on a piece of property at 2145-47 Eldridge."

"Gold Job:

$1,431.00 paid April 18, '52—Check.

$2,500.00, December 13, '51—Cash.

$1,500.00, December 19, '51—Cash.

Total $5,441.00."

It has: "See Comment Number 2."

The next page is headed: "Comments." The first number—Comment Number 1:

"There were four duplexes built on Montgomery 746-48 and 750-52 for Mr. William Epstein; 742-744 for Maynard Epstein; 754-56 for Dr. Sam Green.

"Maynard Epstein paid as follows:

$3,000.00, August 25, '52, by Check—"

Mr. Will Gerber: Has it got anything to do, if the Court please, what other people—he is not talking about anybody connected with this—Dr. Sam Green—and Maynard Epstein—got nothing to do with this. (724).

The Court: Are you gentlemen interested in that phase of the matter?

Mr. Vaden: Not too interested—

The Court: He says they are not interested in that, so don't read that.

A. (Continuing) The check attached to this report of Attorney Bernstein was not furnished by Mr. Bernstein. That is a photostatic copy of cancelled check that I made.

Mr. Vaden: Take it off.

Mr. Will Gerber: You can leave it on there; it is all right.

Mr. Hodges: No, take it off.

The Court: He says it is all right to leave it on there.

Mr. Will Gerber: We have no objection to the paper. We are objecting to him testifying to it. We think Mr. Jameson himself ought to testify.

Mr. Hodges: Are you through, Mr. Gerber?

Mr. Will Gerber: Yes, sir.

Q. Did you receive letter from Bernstein, Snodgrass, Katz and Jacobs, as of February 3, 1955, signed Israel Katz —this letter? A. Yes, sir (725).

Mr. Hodges: Let it be marked next number.

(Said letter was accordingly marked as Exhibit 15 to the testimony of Mr. Norris, and same will be found among the exhibits hereto.)

Mr. Hodges: (Reading) "Mr. H. A. Norris, Intelligence Division, Internal Revenue Service, 212 Falls Building, Memphis, Tennessee.

"Dear Mr. Norris:

"In compliance with your request, I am submitting the information as requested by you regarding various holdings of Mr. William Epstein and wife, Pearl Epstein. These figures were taken from books of account, worksheets, and other records of the companies listed below, which have been and are now in my possession.

"(a) Prescott Company, Inc.:

Cost of stock, acquired February 21, '51—

Ten shares, William Epstein, $2,379.33.

Ten shares, Pearl Epstein, $2,379.33.

Total Cost, $4,758.66.

Stock paid for as of December 31, '51, $1,000.00 (726).

Stock paid for as of December 31, '52, $4,758.66.

"(A total of $1,000.00 was paid by William and Pearl Epstein as down payment on this stock on February 21, 1951. The balance of $3,758.66 was paid out of the funds of Charjean Homes, a partnership. All funds of Charjean Homes at this time were ob-

tained from bank loans. This payment was charged to William Epstein's personal account on the partnership books.)

"Loan balances payable to William Epstein—
December 31, '51, $3,500.00.
December 31, '52, $5,500.00.

"(b) Charjean Homes (A Partnership):

Balances in Capital Accounts, William and Pearl Epstein, December 31, '51, $2,000.00. December 31, '52, Deficit—($1,082.49).

"(c) Forrest Park Apartments, Inc.:

The stock certificate book in my possession shows 110 shares of common stock, $100.00 par value, transferred to Mr. William Epstein in April, 1951, certificate No. 8. There were 330 shares of common stock outstanding, at a (727) total book value of $33,000.00.

"(d) Vollentine Hills Subdivision (A Partnership):

Balance in Capital Account, William Epstein:
December 31, '47, $5,000.00.
December 31, '48, $5,000.00.
December 31, '49, $5,000.00.
December 31, '50, $14.535.17.
December 31, '51, $12,492.95.
December 31, '52, $10,451.62.

"(e) Hawthorne Builders, Inc.:

Amount of Capital Stock, William Epstein:
December 31, '50, $8,750.00.
December 31, '51, None.

"(This corporation was dissolved on March 1, 1951, and assets remaining, Mr. Epstein's share of which amounted to $6,830.88, were transferred to Vollentine Hills Subdivision and credited to his capital account on the partnership books.)

"(f) Lippman's Loan Office (A Partnership). Balance in Capital Account, Pearl Epstein:

December 31, '47, $17,591.26.
December 31, '48. $22.313.71 (728).
December 31, '49, $25,403.78.
December 31, '50, $29,526.70.
December 31, '51, $32,509.97.
December 31, '52, $34,916.52.

"(g) Q & S Realty Company, Inc. Amount of Capital Stock, William Epstein, 125 shares, $100.00 par, acquired April 2, '46—$12,500.00. Notes Payable Balance due William Epstein:

December 31, '50, $6,800.00.
December 31, '51, $6,000..00
December 31, '52, $3,500.00.

"Yours very truly, Israel Katz."

Mr. Vaden: I am erasing some information in pencil Mr. Norris had on here so the jury won't see it.

Mr. Hodges: —Prior to the jury seeing same.

Pass both of them to the jury.

(Exhibits passed to jury for examination.)

Mr. Hodges: Is it all right with the jury if I go ahead?

Q. Mr. Norris, am I correct, then, you have attempted to corroborate and investigate every possible lead as to (729) the defendant's cash on hand at any time he has furnished you? A. Yes, sir.

Q. Have you testified heretofore as to every lead he has furnished you and your attempts to run same down? A. I believe they have all been mentioned.

Q. Were you able to corroborate in any manner, other than what defendant personally told you verbally, this large amount of cash he had on hand?

Mr. Will Gerber: Able to do what, now?

Q. (Continuing) —At the beginning of '48, one hundred sixty-eight thousand dollars?

Mr. Will Gerber: Was he able to do what?

Mr. Hodges: Corroborate—

Mr. Will Gerber: Oh, I did not understand.

A. Well, I—

Mr. Will Gerber: If Your Honor please—just a minute. The question of whether it is corroborated is a question for the jury, not for him—whether he has been able to corroborate—the jury is to decide the question of corroboration. We object to that.

Q. Were you able to find any evidence of a written nature whatsoever to show defendant William Epstein (730), sitting way back there, had one hundred sixty-eight thousand dollars cash, which he said he had, the beginning of '48 other than his word—other than him saying so, we will say? A. Well, I was able to determine or obtain evidence that he had part of that sum.

Q. Well, how much? A. About twenty thousand dollars.

Q. All right. Were you able to find any records showing he had more than approximately twenty thousand dollars at the time he said he had one hundred sixty-eight thousand dollars? A. No, sir.

Mr. Hodges: Take the witness (731).

* * *

Cross Examination of Hubert Norris by Mr. Will Gerber (735).

* * *

Q. Mr. Norris, you made a very thorough investigation of this case, didn't you? A. Yes, sir, I did.

Q. I will say you did. Mr. Norris, in the course of this investigation, I want to ask you whether you found whether Mr. Epstein ever failed to pay a debt in his life? A. Yes, sir.

Q. All right, what debts did he fail to pay? Give them to us. A. I believe the amount he owed the Federal Government.

Q. I am not talking about—we will get around to that. We know all about—

Mr. Hodges: Let him answer the question.

Mr. Will Gerber: If Your Honor please, this witness knows what I am driving at, if Your Honor please, and I submit to Your Honor that this interjection by the District Attorney is wholly improper. He knows hat we know he is charging this man with under-reporting it. I am asking him about debts other than this thing here, now, and I have a right to have an answer, I think.

The Court: Let's be a little more considerate (746) of the witness, now.

Mr. Will Gerber: I want the witness to be considerate of us, too.

* * *

Q. Other than what you claim he owes the Government, did you find where he ever failed to pay a debt in his life? A. No, sir, I did not find any such thing.

Q. Did you ever find where he had ever been sued in his life? (747) A. No, sir.

Q. Did you ever find where an execution of any kind was ever issued against him in his life? A. You mean arrested, or anything of that nature.

Q. No, I am talking about on a judgment that anybody had procured against him—anybody ever get a judgment against him? A. I did not find anything like that.

Q. You found no executions. Did you ever find, Mr. Norris, where anybody ever foreclosed on a piece of his property? A. I did not find anything like that.

Q. You did not find anything like that? A. I found where he had ample funds to—

Mr. Will Gerber: Now, Your Honor, you see—I am sure this man knows—and I know that he is a pretty smart, cagey fellow, and I know that he is capable of interjecting things that are not proper, if Your Honor please. I know that, if Your Honor please. And I want the witness to answer my questions.

Q. Now, did you find where he had ever gone into bankrupcty? A. No, sir (748).

* * *

Q. Now—now, Mr. Norris, Mr. Epstein cooperated with you in this investigation, did he not? A. He attended a conference on—

Q. I asked you first, did he cooperate? A. Well, I am trying to explain.

Q. No, I want an answer, yes or no. Then you can explain. Did he cooperate with you? A. To a certain extent.

Q. To a certain extent. All right, now, to what extent didn't he cooperate? A. Well, the first conference on November 19th, he came there and he explained matters, and he answered questions. He talked, and the information he gave, (751) particularly as to cash on hand, I found to be true. I could prove figures to corroborate it.

I see him again on July 14th, and he recites at that time an absolute—

Mr. Will Gerber: If Your Honor please, I submit that that is not responsive to my question. I am asking him about cooperation. And I am not asking him about statements Mr. Epstein made to him. I am asking him about whether Mr. Epstein cooperated or not.

The Court: He said to a certain extent, and he is answering—he is trying to explain.

Q. Did he furnish you his books?

Mr. Hodges: Just a minute. He hasn't finished answering the question.

Q. Did he furnish you all the books?

Mr. Hodges: Just a minute. I know counsel doesn't like the answer, so he cuts him off.

Mr. Will Gerber: Not a question of liking the answer. It is a question of answering my question, being responsive.

Mr. Hodges: Any question asked, he is entitled to answer.

Mr. Will Gerber: I know, but he is not (752) entitled to answer the question by making a speech. I asked whether the man cooperated; then asked whether the man furnished his books.

The Court: All right, go ahead.

Q. Did he furnish you his books? A. I assume you don't want me to tell about the second—

Q. I asked you, did he furnish you his books? A. He furnished his books that he had. He did not have any further back than 1949.

Q. Did you examine his books? A. He furnished them first to Revenue Agent Huddleston.

Q. I am asking you, did you examine them—not the Revenue Agent. Did you examine his books? A. Let me finish answering the first question, if you don't mind.

The Court: Yes. Now, let's slow down here a little bit, Mr. Gerber. Ask one question at a time, and give the witness time to answer.

A. He did furnish what books he said he had, those little books you showed in here, and he furnished some cancelled checks. He was very cooperative with Revenue Agent Huddleston. He explained numerous matters—(753).

* * *

Q. Did you examine his books? A. I examined those books that he had to the extent—and it was a very brief examination.

Q. Brief examination? A. —To determine and convince myself that Agent Huddleston had made a thorough examination of him and his findings and results therefrom were all right.

Mr. Will Gerber: We object to what his findings were. We are examining you about what you know, not what Mr. Huddleston—

If Your Honor please, this witness knows—

The Court: Don't state what he knows.

Mr. Will Gerber: He knows what should be answered. He has been on the stand before.

Q. Now, did you examine the books? A. Yes, I examined them.

Q. How long did you examine them? A. I spent quite a bit of time on his cancelled checks (754).

Q. I am talking about books—haven't got to the cancelled checks yet. I am talking about books now, Mr.

Norris. Did you examine these books? A. I examined the books very briefly.

Q. When you say briefly, I want the jury to know how long you looked at them. A. I guess I did not look at the books, since I had looked at Huddleston's records of it, over fifteen or twenty minutes at the most (755).

* * *

Q. Quite a few. Now, Mr. Norris, you have offered here in evidence a great many transactions—Mr. Epstein filed an amended return for 1951, did he not? A. Yes, sir.

Q. He had found that he had failed to pay some taxes on some Treasury bond coupons and when he found out about it he filed an amended return and paid the tax, didn't he? A. He filed an amended return, yes, sir.

Q. And paid the tax? A. Yes, sir.

* * *

Q. Mr. Norris, in 1949, Mr. William Neal checked Mr. Epstein's books for 1946. Did Mr. Neal make any (769) report about the inadequacy of Mr. Epstein's books? A. In connection with that report to the Internal Revenue Service, in his report he said that the sales could not be verified in the pawn and loan business.

Q. Did he say anything about the inadequacy of his books, I ask you? A. I don't think he mentioned it in his letter, in his report.

Q. Did the Internal Revenue Department at that time notify Mr. Epstein that there was anything wrong with his books? A. I feel sure in stating that they did not.

Q. They did not? A. No, sir.

Q. You had Mr. Neal here as a witness, did you not? He had been subpoenaed as a witness? A. Well, I did not have him here.

Q. I see. He was subpoenaed as a witness? A. Yes, sir, he was.

Q. Is he still here? A. I don't know if he is. I did not see him yesterday afternoon or this morning.

Mr. Will Gerber: I see.

A. However, I don't know (770).

Q. But, as a result of Mr. Neal's check of Mr. Epstein's books in '46, to your knowledge there was no notification sent to Mr. Epstein about his books being inadequate, is that right? A. I think that is true.

Q. Mr. Norris, when we were up at Nashville, you told us that as a result of this investigation Mr. Epstein had been advised that his books were inadequate, did you not? Didn't you tell us that, to all of us—Mr. Bernstein, Mr. Jones, Mr. Deutsch and myself—didn't you tell us that? A. Yes, sir.

Q. You found out you were wrong about it, didn't you? A. No, sir.

Q. You just testified he was not notified— A. I am talking about I told him on November 19, 1954.

Q. I am talking about Mr. Neal, now—Mr. Neal, now. When we were in Nashville, didn't you tell us that Mr.— that because of Mr. Neal's investigation in 1949 of the 1946 books that Mr. Epstein had been notified by the Internal Revenue Department that his books were not adequate? Didn't you tell us that? A. If I did—if I said that, I certainly would correct myself (771).

Mr. Will Gerber: Well—

A. (Continuing) That would be wrong.

Q. Now, didn't you tell us that? Let's be honest about it. A. I don't think so. If so, I corrected it at the meeting.

Q. Didn't we pull out that report and show you where Mr. Neal had made no statement in his report about the books being inadequate at that time? Didn't we do it? A. I am sure that I recall that subject was discussed, and I am sure I straightened it out at that meeting.

Q. You straightened it out? A. Yes, sir.

Q. Now, Mr. Norris, you heard Mr. Bradshaw testify, a witness who was subpoenaed by the prosecution, didn't you? A. Yes, sir.

Q. He testified that Mr. Epstein in 1951 sustained a loss of $1,126.61 at the Osceola Store, did he not? A. Without looking at the figures, it seems like that would be about right.

Q. That is about the figure he sustained a loss, $1,126.51, and in '52 $429.48, loss of about $429.48, (772) is that right, approximately? A. Assuming that that is right.

Q. I want you to look at the '51 and '52 returns and tell this jury whether Mr. Epstein took a deduction for those losses?

* * *

A. He did not report any income or claim any loss, according to his partnership—(773).

* * *

Q. Although he had a loss, he did not take a loss. Now, Mr. Norris, I want you to take the income tax for 1949, and tell us whether Mr. Epstein made any deduction —took any deduction for charities? A. Yes, sir, he spent—

Q. (Continuing) —That he paid out for that year? A. He spent—

Q. Sir? A. He spent, according to the return, his deduction for charities, contributions, was $3,673.49.

Q. Mr. Norris, did you check, in the course of your thorough investigation, to find whether he ever failed to pay one of the charitable contributions for which he took a deduction? A. I found that he did pay those amounts.

Q. You found that he did pay those amounts? A. Yes, sir.

Q. Look at '50. A. For that year, total of $2,127.40 (774).

Q. Did you find in the course of your investigation that he took a credit where he had not paid for his charitable obligations? A. That was all right; he made those payments.

Q. It was all right. Look at '51 and '52; look at both of them. A. If the question is the same, I can state that I found them to be all right.

Q. You found that he paid his obligations, didn't he? A. He paid those contributions that he claimed on the return.

Q. I see. Now, Mr. Norris, Mr. Epstein came up to Nashville in July of '55, is that right? A. Yes, sir.

Q. He was a sick man, was he not? A. Well, I don't know. I know some doctors said he was, and he did not look as well as he did when I talked with him on November 19th.

Q. He submitted a letter from Dr. Justin Adler, did he not? A. There was some letters submitted from some doctors.

Q. Will you produce that letter, please, sir? A. I may not have that letter (775).

* * *

Q. Well, I want to show you a letter—I want to show you this letter written by Dr. Adler, neuro-psychiatry surgeon doctor, addressed June 27th to Mr. Eugene Bernstein, and ask whether that was not turned over to you gentlemen up there before any statement was ever made or taken from Mr. Epstein. A. Well, I recall that this was, because this first paragraph—we clarified that. He mentions that the Internal Revenue Department is insisting upon the presence of Mr. William Epstein, and I called that to the attention of Mr. Wallwork and it became part of the record that we have not been insisting—

Q. The letter was also made a part of the record? A. This was furnished, yes, sir.

Q. Yes, sir. I want you to read that letter to the jury, Mr. Norris (777).

* * *

"June 27, 1955.

"Mr. Eugene Bernstein, Attorney at Law, Sterick Building, Memphis, Tennessee.

"Dear Mr. Bernstein:

"In pursuance of our telephone conversation in which you stated that the authorities of the Internal Revenue Department in Nashville insist upon the presence of Mr. William Epstein before them, I wish to make the following statement:

"It is my professional opinion that it is not advisable for Mr. Epstein to be subjected to a personal examination about his affairs at this time in view of

his unbalanced emotional and mental state. I have expressed this opinion already in a previous letter to you. I understand now, that non-appearance of Mr. Epstein before the above mentioned authorities, though based upon medical reasons, is likely to result in further procedures much more upsetting to Mr. Epstein. This, of course, places me in a position to choose between two evils in my recommendations as to Mr. Epstein's appearance. I have very little doubt that in view of Mr. Epstein's past and present mental abarrations (779), he will react unfavorably to any inquiry which he is forced to attend. His severe agitated depression in the recent past which had to be treated drastically in a mental hospital, and his marginal recent improvement justifies this belief. The possibility of the spectacle of a public trial, however, would increase the probability of a further acute deterioration of his mental illness manifold.

"Choosing the lesser of two evils, I will consent from a medical point of view, for Mr. Epstein to attend a personal conference with representatives of the Internal Revenue Department, with reservations and understandings in light of the above expositions. There is no doubt in my mind that a public trial would have disastrous effect as far as Mr. Epstein's mental condition is concerned.

"Very truly yours, Justin H. Adler, M. D., Neuro-Psychiatry."

Mr. Will Gerber: We want to offer that as Exhibit 1 to the cross-examination of Mr. Norris.

(Said document was accordingly marked as Exhibit 1 to the Cross-examination (780) of Mr. Norris, and same will be found among the exhibits hereto.)

Q. Mr. Norris, notwithstanding that letter, he proceeded to answer all the questions that were asked of him at that time, didn't he, to the best of his ability? A. Yes, sir, he did that.

Q. He did that to the best of his ability. Mr. Norris, at that particular time he was questioned about these

financial statements, was he not? A. I think what few questions I asked pertained to that matter.

Q. Sir? A. I think I asked a question or two in that connection.

Q. He told you at that particular time that those financial statements did not accurately contain his assets and he did not intend for them to contain accurately his assets—didn't he make that statement to you? A. In talking about the financial statements, and that subject is mentioned one time in reply to a question about the financial statements he furnished the bank, he said the Kirschner money was not listed on there, but (781), he did not consider—

Q. I am asking you now— A. I am—

Q. Will you try to answer my question, Mr. Norris. I don't want to get into any heated discussion with you about these things. I just want to know whether he told you at that time that the financial statement about which you talked about then and about which you talk now did not contain all of his assets and it was not intended for him to report all of his assets on those statements.

Now, just answer that first, and then we will get on to the other thing you are talking about. A. Yes, sir. But this is part of it, too, and the other things, and it is what he said. He said he did not report the Kirschner money on those statements because he did not consider it his until 1949.

"I tried to report to the bank everything I owned personally." That is what he said. "I have never reported anything I did not own personally." That is some of his statements in that connection.

He also said: "I reported everything on the market value as the banks would see it."

And he did not report that money had strings (782) attached to it.

Q. He also told you in connection with that answer that you have just given us—yes, it was true that he did not report the Kirschner money, Mr. Norris, nor did he report approximately sixty-three thousand dollars of his

wife's money; didn't he tell you that at that time? A. I believe you will—that is what he said.

Q. That is what he said. In other words, he told you that he did not consider the Kirschner money his at that time, and that was not reported in the cash in the financial statement, and he told you that there was approximately sixty-three thousand dollars of his wife's money, belonging to his wife, that was not reported in that or not shown in that statement, isn't that true? A. Yes.

Q. That is correct, isn't it? A. That is what it is.

Q. Mr. Norris, didn't he tell you at that time that he did not report all of his assets and did not intend to report all of his assets in that statement?

I wish you would look at it and see if you can't find that (783). A. Well, now, this part here I did find—he said: "I tried to report to the bank everything I owned personally."

Q. I know, but in addition to that there was another statement—I am familiar with that—there was another statement there about the financial statement. I want to ask you to see whether or not he told you that he did not include in the financial statement all his assets, nor did he intend to include all his assets in those informal, unsworn financial statements. A. Well, now, let's see. That is talking about the financial statements. But I want to go further over and see—

Q. Just see if you can't find what I have just been talking about. A. (Continuing) —See if he said it another way.

He says here, "I wanted to build up a big financial statement." Although he says, "I owned some Fairchild stock I had never reported on the bank statement."

Q. He told you he wanted to build up a big statement, is that what he said there? A. Well, here is what you want here; it fits right exactly (784).

> "Some assets I had I did not report to the bank because I did not think it was necessary."

Q. But what was that you said about he wanted to build up a big statement? A. —"Never showed anything that belonged to my wife." "If I wanted to build up a big financial statement, I owned some Fairchild stock I had never reported in the bank statement. No reason for not reporting it—not hiding anything from the bank. If I overstated it, I would be doing wrong. Some assets I had, I did not report to the bank because I did not think it was necessary."

Q. He felt like if he overstated it he would be doing wrong, didn't he? A. Well, now, I don't know how he felt.

Q. I am talking about what the statement says. I don't care how he felt. You just read that. He said if he had overstated it he would feel like he was doing wrong? A. He said, "If I overstated it I would be doing wrong."

Q. Mr. Norris, I want you to get into your hands the financial statement of 1952 about which we have been talking about which much has been said. I want (785) you to look at it while I ask you some questions about it.

* * *

Q. Mr. Norris, I will ask you if it is not a fact (786) that, as covered by your net worth statement, that in '52 Mr. Epstein owned U. S. Savings bonds in the amount of fifty-nine six and a quarter, and U. S. coupon bonds in the amount of $4,586.54.

I will ask you to tell us whether that is not a fact, and whether they appear in that statement? A. Those figures you called out—did you say they were the figures included in the Government's statement?

Mr. Will Gerber: Is that right?

Mr. Deutsch? Yes.

A. Well, assuming that this is correct, and I feel like that it is the way you read it, without getting some big papers out, you want me to tell you now whether they were listed on the financial statement?

Q. Did he include that on his financial statement? A. Well, naturally, they were up as collateral down there at the bank he was giving the statement to, and certainly

I feel like that they are here. They are thirty-seven thousand dollar bonds.

Q. That is the Treasury bonds. I am talking about these savings and coupon bonds. I am not talking about Treasury bonds. I know the Treasury bonds are on there. But I asked you U. S. Savings, he owned (787) fifty-nine six and a quarter, then U. S. coupon bonds, $4,586.54.

Did you find those on there? Do you see there—not Treasury bonds? A. I believe I will get my figures on it.

Q. All right, get them. A. Those figures don't sound exactly like on mine.

I can answer you now on the $5,906.25. That is the Series "E" Savings bonds.

Q. All right—not on there, are they? A. They are not on there, no, sir.

Q. What about coupon bonds, $4,868.54? A. I have this thirty-seven thousand dollars, is right.

Q. I am talking about—you are talking about Treasury bonds, but isn't it true he had $4,586.54 coupon bonds? A. He only listed thirty-seven thousand dollars.

Q. I see. That is what I am trying to get. He did not list these other bonds.

Now, he had an Investors Syndicate certificate for $12,668.63. Is that listed on there? A. What was that number?

Q. The number of the certificate? (789) A. Yes.

Q. Have you got the number? Well, the total amount is $12,668.63. A. Well, he has got stocks and bonds, seventy-five.—

Q. I am asking you about, Mr. Norris—I am now asking you about Investors Syndicate $12,668.63, which you included on your net worth statement. A. Well, I am trying to answer you. This has stocks and bonds, seventy-five thousand dollars listed.

Now, maybe, he breaks that down somewhere further on the statement.

He has notes receivable, thirty-seven some-odd thousand. He has that seventy-five thousand dollars broken down, stock in Q. S. Realty Company, fifty thousand dol-

lars. Well, that is certainly way higher than my figure. And he has twenty-five thousand dollars apartment, West Memphis, Arkansas.

Q. All right. But I am asking you about the Investors Syndicate. A. I don't see that; it is not listed.

Q. You don't see it on there? A. No, sir.

Q. Do you see, Mr. Norris, the forty-five hundred dollars stock that he owned in the Prescott Company? (790). A. Well, I have already—it is not included in that seventy-five thousand dollars.

Q. Not included in there? A. So we know it wouldn't be there.

Q. Do you see the Charjean Homes he had of two thousand dollars in there? A. Well, that naturally would not be in there until—he did not have that investment until February 21, '51.

Q. And wouldn't be in the '52 statement if he had it in '51? A. Yes, it would be. I am mistaken on the date there. That is not there, either, on that one. However, that was transferred later. It is not in there, anyway.

Q. It is not in there. Now, do you find, Mr. Norris, the twenty acres in Arkansas in there? A. He said a half interest in the statement in Osceola, Arkansas, twenty-five—

Q. I am talking about the twenty acres. You remember the testimony that was offered here by the prosecution about twenty acres he owned over in Arkansas. Did you find that in the financial statement? A. Well, let's see. About the twenty acres—(791) he sold some property over there shortly after he bought it. Would that be the property that he sold to Mr. Cockerham, or would you know?

Q. Mr. Norris, he owned it in 1952—did he report it on that statement? That is what I am trying to get at. I want to find out whether this statement is as accurate as you think it is. A. I can possibly save some time for all of us here by telling you the exact differences between that statement and the Government's figures.

Q. I don't want you to do that. I just want you to answer my questions. Will that be all right? A. Yes, sir, but I am rather confused.

Q. The Ferguson property is not on the statement? A. What is the Ferguson property?

Q. The Ferguson property is property on Highway 51 that Mr. Jeter mentioned here; do you remember? A. Yes, sir.

Q. Did you find that listed? A. That isn't on here.

Q. Sir? A. That isn't on here.

Q. It is not on there. Now, Mr. Norris, the statement doesn't contain a great many things that he owned (792), then, does it? A. I found quite a few assets left off the statement, yes, sir.

Q. The statement is not accurate, is it? A. Well, for instance, he says one-half interest store, Osceola, Arkansas, twenty-five thousand dollars. Then stocks and bonds, seventy-five thousand dollars.

Actually, when you consider what he has left off and the overstatements here, it is not too far off from what his net worth was.

Q. That is not what I am talking about. You are talking about inflated items the two items. I am talking about specific things he left off of there.

You would not say that was an accurate statement, would you? A. I am trying to point out—

Q. Would you say it was an accurate statement?

Mr. Fitzhugh: May it please Your Honor, counsel has cut off this witness from answering questions a dozen or so times. He interrupts him.

The Court: Give him a chance to answer.

A. I was trying to point out that the net worth or over-all result of his statement here is not too (793) different—

Mr. Will Gerber: If Your Honor please, does Your Honor hold that that is responsive to my question?

I am asking whether that statement is an accurate statement, is all I asked him.

Mr. Vaden: If the Court please, may I address the Court?

The question about whether it is an accurate statement is for this jury.

Mr. Will Gerber: That is exactly right.

Mr. Vaden: And he can argue on and on about it.

Mr. Will Gerber: But he is an expert; this man is an expert.

Mr. Vaden: This man is a witness, and he is not Mr. Gerber's or anybody else's expert. He is just testifying to facts he found.

Mr. Will Gerber: I can tell you he is not my expert. He is yours, though.

The Court: Well, gentlemen, it is about time for a short recess.

Mr. Marshal, take the jury back for about ten minutes (794).

* * *

Q. Mr. Norris, in about 1940, I believe the proof shows, Mrs. Epstein acquired a home place at 661 East Drive, is that correct? A. October 16, 1952.

Q. She acquired 661 East Drive, the home place, is that right? A. Yes, sir.

Q. I want you to look at the financial statement for 1952 and see whether Mr. Epstein included that in the financial statement? A. I would like to check first and see—I think title was taken jointly, if I am not mistaken (795).

* * *

Q. She owned that property in her own name, didn't she? A. It is not listed on the January 1—

Q. I say, she owned that property in her own name, didn't she? A. It is not listed on the January 1, '52, statement.

Q. I want to ask you if the property is not in her own name, according to the deed? I want you to examine the deed, now, and see if it is not in her name.

* * *

A. I found it, and it was listed in the name of Pearl Epstein.

Q. Pearl Epstein, property owned in her own name, (796) and not included in the '52 financial statement, is that correct? Have you already said that? A. That is correct. And he did not include her assets and liabilities in those statements.

Q. And he also told you at Nashville he did not include her cash, didn't he—her sixty-three five in cash, didn't he tell you that in Nashville? A. He told me he did not include that, or eighty-two thousand dollars more.

* * *

Q. She owned a piece of property at 158-160 Beale. I want you to check and see whether that was in her name. A. Well, he only listed on the statement 122 Beale and 176-178 Beale.

Q. No, there is another you introduced in evidence, Mr. Norris. It is 158-160 Beale. I want you to find that for me and tell me if that isn't in Mrs. Epstein's name (797). A. I imagine—

* * *

A. It is listed in her name.

Q. Sir? A. That one was recorded in her name.

Q. Recorded in her name. That is not on the 1952 (798) financial statement, is it? A. No, sir. I already stated that it was not.

Q. You said that about the home place. I am talking about this at 158-160 is not in the financial statement, isn't that true? A. That is correct.

Q. Now, Mr. Norris, I want you to look at the 1949 financial statement and see whether 661 East Drive and 158-160 Beale are listed on there, which belongs to Mrs. Epstein? A. On the '49 statement?

Mr. Will Gerber: '49 financial statement, yes, sir.

A. They are not on there.

Q. They are not on there. All right.

Now, Mr. Norris, did you make any investigation about those financial statements to the bank? A. Would you clarify that question just a little bit more?

Q. Did you go down to the bank, the Manhattan Bank, and discuss with any official of the bank the facts and circumstances surrounding the furnishing to the bank of those statements? A. Just made available there (799).

Q. If you will just—pardon me, Mr. Norris, if you will just do this for me. If you will just tell me yes or no, and then make any explanation.

Did you yourself go down to the Manhattan Bank and discuss with any official of that bank the facts and circumstances surrounding the making of those statements? That is all I want to know. A. Well, I always attempt, in—

Mr. Will Gerber: If Your Honor please, I think I am entitled to a yes or no answer. I asked him if he ever went down to the Manhattan Bank and discussed with the officials of that bank the facts and circumstances surrounding the making of that statement. I think, Your Honor—

The Court: Try to give him a direct answer, Mr. Norris. You do have a right to explain—

Mr. Will Gerber: That is right.

The Court: (Continuing)—Any answer you make.

Q. Did you do that? A. I attempted to do that.

Q. Sir? (800.) A. I attempted to do that. I always attempt to do that.

Q. What do you mean, you attempted to do that? A. I attempted to find out any information from the bank officials with respect to their customer-furnished financial information.

Q. Mr. Norris, I am talking about this statement—talking about these statements. A. I am speaking of these, too.

Q. Not what is customary—talking about these statements.

Did you talk to any official of the Manhattan Bank—and if so, name him—about these financial statements? A. The people won't talk to you about that information. They will turn their file over to you, but they know nothing about—even if you find out who prepared it.

Q. Mr. Norris, did you talk to any official of the Manhattan Bank about these statements? A. Yes, sir.

Q. Who did you talk to? A. Talked to Mr. Davis, talked to Mr. Jackson. I possibly talked to others about it (801).

Q. Did you talk to anybody at the Manhattan Bank that has got the duty of making loans and taking these financial—I know you talked to Mr. Davis, the bookkeeper—not talking about the bookkeeper, Mr. Davis. Did you talk to Mr. Albert Wooldridge? Did you talk to anybody—Did you talk to Mr. Nelson Castle? A. No, sir.

Q. Did you talk to Mr. John Vorder Bruegge? A. I don't know him.

Q. You don't know him? Well, he is an official at the bank.

Mr. Norris, you have been on this thing now for a couple of years. Did you ever take the trouble to go down to the bank and talk to either of those officials about the facts and circumstances surrounding the filing of these statements with the bank? A. Well, now, clarify your question there. You say I have been on this a couple of years. I know I started in November, '54. I was ready to submit the report in March of '55. And I held up submitting it until after the July 14th conference (802).

* * *

Q. Now, did you at any time—any time from the time you got into this case until this very moment—have you ever discussed with the officials of the bank the circumstances under which those statements were made? Did you do that? A. I merely gathered the information.

Q. I am asking you—

Mr. Will Gerber: If Your Honor please, I just don't think it is responsive to my question. Every time he wants to get on to something else. It is susceptible of a yes or no answer.

Q. Did you ever talk to Mr. Wooldridge about it? A. I have already stated no.

Q. You never discussed it with these people. Mr. Norris, did you make any investigation to (803) deter-

mine whether as a result of the making of any of these statements, Mr. Epstein defrauded the bank in any way? A. He did not defraud the bank.

Q. He did not defraud the bank. Now, Mr. Norris, Mr. Epstein submitted to the Intelligence an affidavit setting forth a financial history of forty years, did he not? A. It was submitted by Mr. Bernstein in his behalf.

* * *

A. Yes, sir, I have that affidavit (804).

Q. You have it. Mr. Norris, I want you to read that affidavit to the jury. A. It is quite a long statement (805).

* * *

Mr. Will Gerber: This is a sworn statement.

Go right ahead. Read it to the jury, Mr. Norris.

A. (Reading:) (806.)

"Affidavit.

"State of Tennessee.

"County of Shelby.

"The undersigned William Epstein, a resident of Memphis, Tennessee, 61 years of age and duly sworn, states under oath to the best of his memory and belief, as follows:

"That, I was born at Memphis, Tennessee, and that I have been a resident of Memphis, Tennessee, for over forty years;

"That, I have been and that I am now a pawnbroker and merchant operating a loan shop and merchandising business in Memphis, Tennessee, on the same street since 1924;

"That, in 1912, when I was 18 years old, I went to work in the pawnshop of Nathan Karnowsky, on Beale Street, and afterwards for Morris Lippman on Beale Street;

"That, in 1914, my father died in Lake Village, Arkansas, leaving a farm and cotton gin, which caused me to quit my job and I then went to Lake Village to help in the administration of my father's estate, and

I remained there until 1917, when I returned to Memphis with about (807) $16,000.00, saved from my work and other sources—also from selling raw furs and hides, also from working for the Levee Board;

"That, after my return to Memphis in the spring of 1917, I went to work for Lippman, saving about $2,000.00, and I married on June 3rd of that year Miss Pearl Murray, my present wife, and in March, 1918, I went into the Army and served overseas during the year 1918, and in 1919 I was wounded in action, received the Purple Heart, and was decorated with a Silver Star;

"That, in April, 1919, upon my honorable discharge from the Army I went to work for Louis Lerner on Beale Street, saving during the period I stayed with Lerner, about $5,000.00;

"That, from 1919 till 1928, my wife and I and my son Nat (who was born in 1920), lived in the home of Mr. and Mrs. J. P. Kirschner, who at that time were both employed by the City of Memphis as custodian and cafeteria manager respectively of Cummings School, living in a house furnished by the School. Mr. J. P. Kirschner was the step-father and Mrs. Kirschner was the mother of my wife and they furnished us free room (808) and board while we lived with them permitting me and Mrs. Epstein to save most of the money we made at that time;

"That, sometime in 1921, I left Lerner and I went into partnership with Nathan Karnowsky, Commercial Loan Office on Beale, who at that time, had an inventory of about $30,000.00 in which I acquired a half-interest for $10,000.00 cash, that came from my savings;

"That, I stayed with Karnowsky, as his partner, until the spring of 1924, when I sold my one-half interest in the business back to Karnowsky for about $19,000.00, which amount I received from him in cash; in addition, as a partner, I withdrew during that period about $50.00 per week so that my total earnings during the period that I was with Karnowsky

was about $18,000.00, while during that time, as house guest of Mr. Kirschner, I spent for myself and my family hardly more than $500.00 per year, leaving about $16,500.00 savings;

"That, shortly afterwards, in the spring of 1924, I opened my own business at 172 Beale, investing in it the proceeds from the sale of (809) my share in Karnowsky's and drawing upon my other savings which savings, at that time, were about and at least $63,500.00 including the $19,000.00 from Karnowsky;

"That, ever since 1924, I have operated my own pawnbrokers and merchandising business which, over the years, grew steadily as during the first four years of operations, while we lived with the Kirschners, I plowed back most of my earnings, always steadily and constantly increasing my cash balance on hand, which I kept in the safes and the vault of my business, that I felt safe in doing, as Beale Street had been and is now guarded by a police detail which worked rather effectively so that there has never been a pawnbroker's safe cracked in 30 years on Beale Street;

"That, in 1928, with my son Nathan growing up, we needed more space, and we, therefore, left the Kirschner house and I moved with my wife and son to a two bed room apartment on 244 Cleveland, where we stayed until 1930, when we moved to 1101 Peabody, where we occupied a three bed room apartment, one-half of a duplex, paying approximately (810) $65.00 rent per month in each place; that in 1934, Mr. J. P. Kirschner and his wife moved into our home, and they lived with us until Mrs. Kirschner died in 1941, and we kept Mr. Kirschner until his death in 1952; that, about in 1938, we moved to another place on Harbert which was somewhat bigger and where we remained until we moved in 1941 to Hawthorne and from there into our own house at 661 East Drive in November, 1942, for which we paid $11,000.00 cash out of my savings;

"That, it is presently very difficult for me to state accurately how much we spent in living expense every year, since in 1928, we left the Kirschners to live on

our own, but the following figures I believe, considering all circumstances, to be fair and correct: From 1924 to 1928, living with the Kirschners, we paid nothing for room and board and we might have spent for incidentals in that time about $500.00 a year or, for the five years about * * * $2,500.00.

"While living at the Cleveland Apartments, we might have spent, for three people, about (811) $1,500.00 per year, or, for the years 1929 and 1930, $3,000.00.

"From 1931 to 1933, while living on Peabody, during the worst years of the depression, we spent an estimated $2,000.00 per year for living expenses or a total of, $6,000.00.

"From 1934 to 1936, we were five people, the Kirschners having moved in, we spent probably about $3,000.00 per year, or a total of $9,000.00.

"Total living expenses, 1924-1936, about $20,500.00.

"From 1937 to 1941, before we moved into the new home at 661 East Drive, we spent about $3,600.00 a year, or for the whole period about $18,000.00;

"When we moved into our new home on East Drive, cost of living went up somewhat, we spent about $4,000.00 per year and about $25.00 to $30.00 a week for the servants, which all together might have amounted, from 1942 to 1947, inclusive, to about $31,200.00, to which expense my son Nat, whose family then lived with us, contributed about $30.00 a week;

"That, in 1934, I rented 166 Beale in (812) addition to my store at 162 and 164 Beale expanding my business and from then on using 166 Beale as my Loan Department, where it is still located;

"That, on May 30, 1937, the Tennessee Legislature passed an Act forbidding pawnbrokers to carry on any other business or vocation, directly or indirectly, in the same building, or in any other building adjoining his place of business;

"That, this new law caused me, upon legal counsel, to transfer my merchandise inventory to J. P. Kirschner and the J. P. Kirschner store was then operated at 162-164 Beale, while my pawnshop was op-

erated at 166 Beale, and the door was walled up between the two stores, my wife Pearl Epstein was employed as bookkeeper, while I practically managed the Kirschner store from 166 Beale as well as my loan business;

"That, J. P. Kirschner and his wife, the latter until her death in 1942, the former until his death in 1952, lived with us as part of my household, never paying board, and, in turn, J. P. Kirschner never received any salary or pay (813) in any form from me, as we took care of his needs in every respect;

"That, while the J. P. Kirschner store was operated, it operated under licenses issued annually to and in the name of J. P. Kirschner, who was thus fully authorized under the law to do business in his own name;

"That, when on April 14, 1949, the pawn shop law was changed by repealing the provisions of the 1937 Act, I immediately dissolved the J. P. Kirschner Store and took over its inventory worth at that time $27,218.55, treating this as a credit on J. P. Kirschner's final income tax return and as a debit on my own return;

"That, during the period of the formal separation of the two stores, J. P. Kirschner had filed annually Federal income tax returns for the years 1937 to 1949 inclusive, showing a total reported net income of over $128,000.00 and a tax paid of about $29,837.07, while at the same time, from 1937 to 1947 inclusive, I and Mrs. Pearl Epstein filed separate returns, and since 1948 have been and are filing joint income tax returns, showing for the years 1937 (814) to 1948, the income from the pawn shop and from other sources except income from the Kirschner store;

"That, it has always been my policy to use banks not as depositories but more as a convenience to pay bills by check; that, therefore, I made it a policy never to deposit much more money in the bank than I needed to make current check payments, keeping otherwise my cash at the office on hand, which amounted at times to rather considerable sums, that this included

during the separate existence of the Kirschner Store from 1937 till early 1949, also the money made and accumulated by the Kirschner store, which cash I kept separated within the same vault or safes in the store; thus in effect the transfer of the store to Kirschner at that time, in my opinion, created a trust with Kirschner as the trustee, and myself as beneficiary;

"That, I thus summarize my financial history, which I state to the best of my ability, knowledge, and memory as follows:

"(1) In 1917, when I returned to Memphis, Tennessee, and got married I had saved up to about (815) $16,000.00 and Mrs. Epstein had saved about $3,500.00, this money we kept set aside for future use;

"(2) In 1919, when I stepped off the boat coming home from the war (I had been wounded in action and hospitalized in Europe), I brought with me savings in the amount of about $11,000.00; Mrs. Epstein having worked all the time since our marriage had saved about $7,500.00 of her own;

"(3) In 1921, I was able to buy one-half of Karnowsky's business for $10,000.00 cash and I had still plenty of money left;

"(4) In 1924, after I sold my interest in Karnowsky, I had on hand approximately $63,500.00 as follows: My savings up to 1917, $16,000.00; Mrs. Epstein's savings up to 1917, $3,500.00; Income from Lippman in 1917, about $2,000.00; Brought home from the Army, $11,000.00; Mrs. Epstein's earnings, 1917-1919, saved about $7,500.00; William Epstein worked for Lerner and saved from 1919-1920 about $5,000.00; Partnership with Karnowsky, $18,000.00, less living expense, 1921-1923, $1,500.00—$16,500.00; Sale of land in Arkansas, $2,000.00 (816).

Total, $16,500.00—"

Mr. Bernstein: That is incorrect. Sixty-three.

The Witness: $63,500.00.

Mr. Bernstein: Thank you.

A. (Continuing reading:)

"(5) From 1925 to 1936, inclusive, I made about $80,200.00 and I filed tax returns when due, leaving net earnings to spend or save of about $78,500.00, which after considering living expenses 1924-1936, of about $20,500.00, and life insurance of about $10,500.00, left me with about $47,500.00 which, if added to my previous savings of $63,500.00 resulted on January 1, 1937, in total accumulations of about $111,000.00.

"(6) From January 1, 1937, till December 31, 1947, I and my wife reported as net income $232,-119.81 on our returns, which, after paying income taxes of $64,815.30 left, when depreciation and fifty per cent long-term capital gains deductions are added back, $174,006.01 to spend or save, so that by (817) January 1, 1948, after allowance for living expense and life insurance, I wound up with an estimated amount of about $85,500.00 as follows: Taxable income reported, after income tax, $174,006.01—January 31, 1937—December 31, 1947. Less estimated living expense: 1937-1941, $3,600.00 per year, $18,000.00; 1942-1947, $4,000.00 per year, $24,000.00; 1943-1947, servants' pay, $7,200.00; Life insurance premiums paid, $18,500.00; Total $67,700.00. Less Nat Epstein's household contribution 1941-1947, eight years, $12,500.00. Estimated net living cost, $55,200.00. Available for investment, $118,806.01.

"Invested 1937-1947: Treasury bonds on hand December 31, 1947, $44,755.29; Vollentine Hills, invested 1946-1947, $5,000.00; Pearl Epstein Investor's Syndicate, $8,609.10; One hundred shares of Fairchild Engine, $3,000.00; Q. & S. Realty Company investment and notes, $24,500.00; Park Avenue Restaurant, November 1, '46, $8,377.85; Real (818) estate bought, $40,000.00; Inventory, December 31, 1947, $49,850.50—January 1, 1937, $25,317.45—$24,533.05; Kirschner note, $10,497.45. Total, $169,272.74.

"Less bank loan, balance December 31, 1947, $20,-000.00—$149,272.74. Excess derived from funds

accumulated previously, $30,466.73; funds accumulated up to January 1, 1937, estimated, $111,000.00. Balance, January 1, 1948, $80,533.27. For possible errors in estimation for the whole period 3/1-1913-1/1-1948—some of this $5,000.00 was no doubt accumulated from the sale of old clothing and house furnishings, etc., $5,000.00. Available, $85,533.27.

"(7) This amount does not include the Kirschner money which amounted to $82,780.97 as follows: Net income reported by J. P. Kirschner, 1937-1949, $129,339.14; Tax paid, $29,837.07; Balance, $99,502.07. Closing inventory, 1949, $27,218.55 (819); Opening inventory, 1937, $10,497.45—$16,721.10. Cash from Kirschner available January 1, 1950, $82,780.97.

"It is this money plus my own cash savings and any unused but reported earnings from 1948 to 1952 which I have invested since 1948, following a plan of gradual retirement from my business;

"That, if the Government claims that my net worth increased from January 1, 1948, till December 31, 1952, by, as I understand it, about $291,354.98, while I have reported during that period only $115,473.27 in net income, such a difference can be explained as follows:"

* * *

"Amount to account for per Government, $291,354.98. Less amounts to be allowed by (820) Government: Nat's household contribution, $7,800.00; Depreciation, business car, $2,634.44; Excessive living expense, $8,000.00; Opening inventory, Kirschner, $10,497.45—$28,931.89. Amount to be accounted for, $262,423.09.

"Explanation: Cash on hand, January 1, 1948, correct: $85,500.00; Government: $21,740.00—$63,760.00. Cash from Meynard Epstein, $1,250.00; Cash from Kirschner, $82,780.97; Income reported, $115,473.27. Accounted for: $263,264.24. Difference of $841.15.

"That, on January 1, 1952, I sold a one-third interest in my business to my nephew Meynard Ep-

stein, who paid for it by giving me $1,250.00 in cash, a check for $8,750.00 and a note for $31,666.66, which I still hold; and a written partnership agreement was drawn and signed and all this was done by me in preparation of a step-by-step retirement from business life, which is becoming too heavy a burden for my impaired health; (821.)

"That, I have been and that I am now a Scottish Rite Mason and a member of the Shrine, the American Legion, for thirty-five years, the Veterans of Foreign Wars, Post 684, of which I was Junior Commander, Senior Commander and Commander, and for the last four years I have been vice-president of Baron Hirsch Congregation and I have been on the Board of Jewish Welfare Fund for the last fifteen years;

"That, if my books do not reflect a property ledger showing all my assets I realize now that this is a mistake but I have always seen to it that at all times my books and business records were kept in an orderly fashion according to my understanding of the requirements of a pawnbroker business;

"That, sometime in 1949, my 1946 return was checked by an Internal Revenue Agent, which, except a small correction, found nothing whatsoever to criticize in or about business records and I was kept in the belief that all my records met the requirements of the law;

"That, when, in years past, I have occasionally furnished my banker with net worth (822) statements that do not fully agree with this information, such statements were usually furnished on a rough estimate basis and I never intended them to be a full disclosure of all my funds, particularly my cash on hand; they had to serve only because the bank requested some kind of statement;

"That, when an error was discovered in my 1951 return, I saw to it that the error was corrected immediately and an amended return was filed and additional tax paid for that year;

"That, in all years past I have tried to report my income honestly and pay all my taxes and in no instance have I tried to evade any tax I owed."

—Signed—"William Epstein."

Looks like it is Macie C. McCrady. And her commission expires October 6, 1957.

The Court: What is the date of that statement? June, '55?

Q. Now, there is another—

The Court: June, 1955?

A. June; it was executed June 14, 1955.

Q. Don't you have an affidavit on the back of that? (823.) Wasn't there an affidavit furnished you right on the back, or the last page on there, from Mrs. Epstein? A. There is one. I thought it was the same thing.

* 2 *

A. It is page 10.

Q. Let's read that page 10. A. There is another one here:

"The undersigned, Mrs. Pearl Epstein, has carefully read the foregoing statements of her husband, William Epstein and hereby agrees with the statements made therein to the best of her memory and belief and she further states;

"That, I had been working for F. B. Hornsby, referee in bankruptcy, and for the Delta Land Company five years before my marriage to William Epstein and that I kept on working three years after my marriage, keeping most all the money I earned, which was up to $200.00 per month;

"That, I was able to save most of my money, as I lived before and after my marriage and until 1928, with my mother and stepfather who furnished us free board, and some of my (824) clothes, until my marriage and that even after I got married, neither my husband nor I ever paid for our board until we moved in 1928;

"That, I know from my own knowledge that there was always large sums of cash stored in the vault and the safes of the business, including the money from the Kirschner store."

That is signed, "Mrs. Pearl Epstein." Executed June 14, 1955. And that is all. Let's see—Maurice C. McCrary, Notary Public.

Mr. Will Gerber: We want to offer the affidavit and mark it Exhibit 2 to the cross-examination of Mr. Norris.

(Said document was accordingly marked as Exhibit 2 to the Cross-examination of Mr. Norris, and same will be found among the exhibits hereto.)

A. (Continuing) —That could be Maurice—might be Mamie—can't read too good.

Q. Mr. Norris, in your previous testimony on direct examination, you did not tell us anything about Mr. Epstein telling you that the creation of the Kirschner Store was the result of the passage of an act in 1937 (825) by the Tennessee Legislature, had you? A. No, sir, I had not.

Q. You did not? A. I did not talk about that.

Q. Did you make any investigation as to that matter? After the affidavit was furnished to you, did you follow that lead to see whether Mr. Epstein was telling the truth about it? A. Well, naturally, we tried to check everything he said as to whether it is true or not.

Q. I am asking you did you check about this, the Act of 1937? Naturally, I know you checked everything, but did you check to see whether Mr. Epstein was telling the truth that an act of the Tennessee Legislature was passed in 1937 providing that he could not operate a sales store in connection with his pawn broker establishment? A. I convinced myself that that was true; there was an act passed.

Q. Well, why didn't you tell the jury about that on direct examination? A. Be glad to tell them now.

Q. I know you are telling them now. Let me ask you this. Did you go to the record, did you check the (826) books to see whether there was any act passed?

A. To tell you the—to be—I actually took your word on that, Mr. Gerber, on that one.

Q. Oh, you did? Well, Mr. Norris, I appreciate that very much; appreciate that. A. Well, you said you were—

Mr. Will Gerber: If the Court please, at this time I want to offer in evidence certified copy of House Bill 1269, Chapter 185, Public Acts of 1937, showing that the Tennessee Legislature passed an act requiring to do what Mr. Epstein did. And I want to have it marked Exhibit 3 to the cross-examination of Mr. Norris.

(Said document was accordingly marked as Exhibit 3 to the Cross-examination of Mr. Norris, and same will be found among the exhibits hereto.)

Q. Now, he told you that in 1949 this act was repealed, is that right? A. Yes, sir.

Q. And when the act was repealed, he discontinued the operation of the Kirschner Store and combined the (827) stores, did he not? A. Yes, sir.

Mr. Will Gerber: If the Court please, I want to offer in evidence a certified copy of House Bill 1223, Chapter 205, Public Acts of 1949, showing that the section in question in the 1937 Act was repealed at that time. And I want to mark it Exhibit 4 to the cross-examination of the witness.

(Said document was accordingly marked as Exhibit 4 to the Cross-examination of Mr. Norris, and same will be found among the exhibits hereto.) (828)

* * *

Q. Now, Mr. Norris, when we had a meeting in Mr. Wallwork's office, he was questioned about the circumstances under which he started the Kirschner Store, was he not? A. Yes, sir.

Q. At that time he told you gentlemen that the Act of 1937 was passed, that Mr. Leo Goodman, an attorney at this bar, represented the pawn people, and that it (829) was on the advice of Mr. Leo Goodman that he separated his stores as he did? Did he make that statement to you?

Now, look and see if you don't find about Leo Goodman in there? A. He said he figured out the using of Kirschner's name in order to get around that in the law.

Q. I am not asking you that. I am asking you, Mr. Norris, whether he did not—he did not tell you that Mr. Leo Goodman, an attorney at this bar, advised him what to do about that? A. He said that Mr. Leo Goodman told him to do that, and also file returns in the name of Kirschner.

Q. Told him to file it separately, didn't he? A. That is what he said.

Q. Mr. Norris, Mr. Epstein at that time told you and told Mr. Wallwork, and told everybody at that meeting that if he had gotten bad advice about that he was ready and willing to pay any tax that he owed the Government as a result of it, did he not? A. He said he was ready and willing to pay taxes, all right, yes, sir.

Q. That is right. That is right.

Now, Mr. Norris, the Kirschner store discontinued (830) operation in 1949 in about April, is that right? A. Under that name, yes, sir.

Q. And it was consolidated with Mr. Epstein's store, is that right, or not? A. Well, it was handled on his tax returns after that time.

* * *

Q. Now, Mr. Norris, I want to show you a chart, and (831) I want you to take the affidavit that you have just read to the jury—

Mr. Fitzhugh: Let's see it.

Q. (Continuing) —And tell us whether this chart correctly sets out the figures as contained in that affidavit. We have tried to make it compact. I want you to check it against the affidavit and see if these figures are correct.

The Court: Well, that would take a little time. There are a lot of figures in the affidavit.

Mr. Will Gerber: I know, but I want to check the affidavit against it, if Your Honor please. I don't want to delay the proceedings.

The Court: Here is what I suggest about that, gentlemen. We do have another matter at this particular time, and it is now twelve o'clock—

Mr. Will Gerber: Sir?

The Court: I say, it is now twelve o'clock, and we do have another matter set for this particular time, and I suggest that we adjourn this hearing until one-thirty.

Mr. Will Gerber: May we come up there, (832) Your Honor.

The Court: In the meantime, Mr. Norris—

Mr. Will Gerber: Can we come up to Your Honor just a minute?

The Court: In the meantime, Mr. Norris will have an opportunity to check the exhibit (833).

* * *

Q. Mr. Norris, in addition to checking this chart, I also want to present you another chart with reference to inventory. I would like you to check that against (834) the returns to see if these figures are correct. A. That is using both the Epstein returns and also returns filed in the name of Kirschner—is that right? (835.)

* * *

Q. All right, did you take the chart and compare it with the affidavit? A. I took both, yes, sir, I did do it.

Q. Did you find it to be correct? A. I found those figures to be the same as those in the affidavit.

Mr. Will Gerber: If Your Honor please, I want to offer the chart in evidence and mark an exhibit whatever the number is, to the cross-examination of Mr. Norris (838).

And I want to hand it over here, just as it has been hanging there, just one at a time. First let's mark it.

(Said chart was accordingly marked as Exhibit 5 to the cross-examination of Mr. Norris, and same will be found among the exhibits hereto.) (839.)

* * *

Q. Mr. Norris, we have offered a chart there which shows inventory— A. Yes, sir.

Q. Have you checked that? A. Yes, sir.

Q. Is that correct? A. As far as I had records to be checking—I used my work papers, records, and those of Revenue Agent Huddleston, and work papers, and those I checked I found to be correct (840).

* * *

Q. Now, Mr. Norris, I think it was at the June meeting in Nashville, there was submitted to you and Mr. Wallwork certain lead affidavits, one of them from a Mrs. Theo Powers.

I would like for you to produce that affidavit.

Mr. Fitzhugh: May it please Your Honor, we would like to see the affidavits. And we want to object to getting in the testimony—attempting to get in testimony of various witnesses through affidavits. We were patient and made no objection to the affidavit of the defendant, but we certainly don't think that these affidavits can be introduced and take the place of witnesses' testimony. He is attempting—

Mr. Will Gerber: If Your Honor please, if you will give me just an opportunity to talk to this witness, I am going to show you the absolute (843) competency of them, if Your Honor please.

Q. Do you have the affidavit?

Mr. Fitzhugh: Well, we want to see them.

Mr. Vaden: We want to see them.

Q. Do you have the affidavit? A. Yes, sir.

Mr. Will Gerber: Do you want to see it?

Mr. Vaden: Talking about bringing the witnesses down here—we put plenty of them on the stand.

Mr. Fitzhugh: This is some relative of the defendant. We want these people brought in so we can cross-examine them.

Mr. Will Gerber: Well, if Your Honor please, let me get through with the witness, and I will show you why we can't bring them in and cross-examine them.

The Court: Just a moment. Just a moment.

Mr. Fitzhugh: We seriously object to introducing the affidavits of people we are not able to cross-examine.

The Court: Just a moment.

Mr. Fitzhugh: We haven't introduced any affidavit (844).

The Court: Just a moment. Is this a matter, now, to be discussed in the presence of the jury?

Mr. Vaden: No, sir.

Mr. Will Gerber: We are willing to discuss it in the presence of the jury. We are willing to show—

Mr. Fitzhugh: No.

The Court: The Government is not willing to do that. But is it a proper matter to discuss in the presence of the jury?

Mr. Will Gerber: If Your Honor please, I haven't finished examining this witness yet. He hasn't read it. But I want to ask him another couple of questions to show Your Honor and the other gentlemen all about it. Your Honor doesn't know how to rule on this until I ask him a couple more questions.

Mr. Fitzhugh: I think we ought to settle this out of the presence of the jury. I don't know how many more affidavits he is going to try—

The Court: Mr. Marshal, take the jury out to their room.

Mr. Will Gerber: If Your Honor please, I object to Your Honor ruling or ordering the jury (845) out of the room until Your Honor has had an opportunity to rule on it and let me state how I think the affidavit is competent.

The Court: Take the jury out, Mr. Marshal.

Mr. Will Gerber: All right.

(The jury thereupon retired from the court room, and the following occurred out of the presence and hearing of the jury:)

The Court: Have you gentlemen read the affidavit?

Mr. Vaden: Yes, sir.

Mr. Fitzhugh: Yes, sir.

The Court: Whose affidavit is it?

Mr. Vaden: It is a half-sister of Mrs. Epstein, who goes into some detail about she knows that they lived with

Kirschner without cost, and so forth, so forth—the same thing that Mr. Epstein had in his affidavit.

Mr Fitzhugh: We strenuously object to it. We don't think the affidavit of the defendant was competent, may it please Your Honor.

Mr. Will Gerber: Is Your Honor going to (846) give me a chance to talk to this witness before Your Honor passes on it?

The Court: Yes, the Court hasn't cut anybody off in this lawsuit. All of you will have an opportunity to talk. Let's just have a little more order about it.

Go ahead and ask him anything you want to.

Q. Mr. Norris, this affidavit was submitted to you when? A. It was—

Q. June 14th, or June 17th, or what day was it? A. It was submitted at the conference over at Nashville. I was there, Mr. Bernstein, and Mr. Jones, and Mr. Deutsch, and—

Q. I am asking you when was it. Was it June, '55? A. It was in June of '55.

Q. Did you make any effort to—now, this was a lead affidavit—did you make any effort to talk to this woman? A. Let me see the affidavit, if you please, sir.

* * *

Q. I want to ask you whether you ever made any effort to talk to this lady. A. There was not anything new, particularly from a (847) checking standpoint, that I could verify in that. Things that I already knew—

Q. Did you talk to her? A. No, sir.

Mr. Will Gerber: If Your Honor please, I want to say now that that was a lead affidavit—

Mr. Vaden: What is he talking about?

Mr. Will Gerber: (Continuing) —That he did not follow, and that this lady unfortunately died on January 20, 1956. He had from some time in June of '55 until the time she died to talk to her. He never made any effort to talk to her.

We submit that, under the circumstances, it was a lead affidavit, and we insist that it has a right to go into the record.

The Court: Mr. Clerk, bring me the affidavit over here and let me see it.

Mr. Will Gerber: It has to do with leads prior to 1920.

(Document read by the Court.)

The Court: What is the authority for the introduction of this type affidavit?

Mr. Will Gerber: Yes, sir, we can present (848) some authority.

Mr. Hal Gerber: Your Honor, we submit that under the Holland case that was a lead which was submitted to this witness which was reasonably susceptible of being checked; that it concerns a period of time prior to 1920, about which no direct proof has been introduced; it concerns the financial history of the defendant between 1912 to 1920. And we submit that in Holland against the United States, Justice Clarke very carefully discussed the problem of leads, and alluded to the proposition that this net worth method is fraught with inferential circumstances upon which the guilt of the defendant is sought to be proven.

Mr. Clarke says that where a taxpayer has made explanations inconsistent with his guilt, and that those explanations are necessarily susceptible of being checked, that it is absolutely incumbent upon the agent to investigate them, and if he doesn't, the Court may take them as true and refuse to submit the case to the jury.

Those are the words of Justice Clarke (849).

And we submit that this is a lead affidavit, and under that authority it is essential that it be submitted to this jury for the protection of the rights of this defendant.

Mr. Hodges: Your Honor, I just want to point out one thing. The Holland case says every reasonable lead, not fanciful leads.

Mr. Hal Gerber: The reason it is stated in that opinion is that the Supreme Court of the United States realizes

that this is a powerful method which might take away some of the rights of the defendant, and in fact does take those rights away, and unless fairness is included in the investigation of such a matter, the defendant will be put to prejudicial disadvantage. And that is why it is not--the reason, that is the reason they stated that.

Mr. Will Gerber: And I want the Court of course to understand the lady has since died, and he had six months in which to have called her.

Mr. Hal Gerber: I have the quotation, if Your Honor would like for me to read it.

The Court: The Court is familiar with the Holland case and has that case before it at this (850) time. It does not deal with the admission of evidence of an ex parte, self-serving affidavit.

Mr. Will Gerber: It is not self-serving. It is a lead that was given.

Mr. Hal Gerber: This is not the defendant's affidavit.

The Court: Just one moment. The Holland case does not deal with the admission in evidence of an affidavit of the type offered here, if I understand that case.

Mr. Fitzhugh: May it please the Court, while we have got the jury out, too, we would like to know how many other affidavits are going to be attempted to be injected into this lawsuit, so his Honor there can rule.

Mr. Will Gerber: You can sure know.

Mr. Fitzhugh: Yes.

Mr. Will Gerber: You can certainly know.

Mr. Fitzhugh: This is our—completely the understanding of the Holland case—

Mr. Hal Gerber: May I say this, Your Honor?

Mr. Fitzhugh: —The case can't be tried by affidavits (851).

Mr. Hal Gerber: May I say this, Your Honor?

If I may say, Mr. Fitzhugh—referring to the one we are introducing in evidence at this time—the investigation is predicated upon this set of facts. The Agent Norris was told in 1955, long before this person died—this person was a resident—was a resident of Memphis, Tennessee—

that she had information that could corroborate the explanation of the taxpayer inconsistent with his guilt. We took the precaution of taking the affidavit of that person so that it might be preserved. And we not only did that, but we filed it with this man and with the Internal Revenue Department. He has made no effort to talk to this woman; and unfortunately, she is now dead and not available as a witness.

Now, if that is not exactly what Justice Clarke had in mind when he put the onus on the Government of tracking down these leads, because of the very nature of this method being based on circumstances, inferences and conclusions that are not supported by facts—we would have no (852) way to support ourselves, no way to defend ourselves in a matter of this kind.

We took the precaution of doing it. The woman was available to him, and as a matter of fact is now being used or apparently trying to be used by the prosecution as a weapon against us because we adequately prepared ourselves. And I submit to Your Honor that in itself is unfair.

The Court: The law does not require Mr. Norris to interview this party—

Mr. Fitzhugh: No, sir.

The Court: It is stated here in the Holland opinion, and it is a rather lengthy one, but as follows:

> "It is, of course, not for us to prescribe investigative procedures, but it is within the province of the courts to pass upon the sufficiency of the evidence to convict. When the Government rests its case solely on the approximations and circumstantial inferences of a net worth computation, the cogency of its proof depends upon its effective negation of reasonable explanations by the taxpayer inconsistent with guilt. Such (853) refutation might fail when the Government does not track down relevant leads furnished by the taxpayer—leads reasonably susceptible of being checked, which, if true, would establish the taxpayer's innocence. When the Government fails to show an investigation into the validity of such leads, the trial

judge may consider them as true and the Government's case insufficient to go to the jury. This should aid in forestalling unjust prosecutions, and have the practical advantage of eliminating the dilemma, especially serious in this type of case, of the accused's being forced by the risk of an adverse verdict, to come forward to substantiate leads which he had previously furnished the Government. It is a procedure entirely consistent with the position long espoused by the Government, that its duty is not to convict but to see that justice is done."

Mr. Will Gerber: That is right.

Mr. Hal Gerber: That is exactly right. That is what we base the objection on.

The Court: Now, the case does not say that incompetent evidence may go to the jury (854) in a trial of this kind.

Mr. Hal Gerber: Your Honor, this refers to matters forty years ago. There is no way for this defendant to come in and corroborate his statement except by people who were living and knew about it at that time. A man does not keep records for forty years, nor should he be required to. But, by the very virtue of a net worth case, he has got to go back and recount his financial history for his entire experience, and I would like to know how he can do that but—

Mr. Will Gerber: If Your Honor please, we have got one here—a woman eighty years old. He did not see fit to go out and talk to her. We did here—

The Court: Is that this party?

Mr. Will Gerber: No, that is Mrs. Powers got here. Have got two more here. They all go back to periods beyond 1920.

The Court: All right. Let's see the others, now. Get them now while the jury is out.

Mr. Will Gerber: Yes, all right, he has (855) got them, got them now.

The Witness: You want the names? Mrs. Moskowitz, and Mrs. Powers, and William Epstein.

No—William Epstein has already—

Mr. Will Gerber: No, you have an affidavit from an uncle, who is William Epstein.

The Court: Is Mr. William Epstein, the uncle, available?

Mr. Will Gerber: He is dead, Your Honor. This is the reason we offer this, because he is dead, and because the witness did not go out, see fit to—

Mr. Fitzhugh: May it please Your Honor, the death of a person who has been interviewed has nothing to do with its competency or incompetency.

Mr. Will Gerber: It may not to you, but—

The Court: Are the other affidavits referred to along this same line?

Mr. Will Gerber: I would like Your Honor to read it.

The Court: —Same line as Powers?

Mr. Will Gerber: Yes (856).

The Court: How is that?

Mr. Will Gerber: Along those same lines, I imagine, but would like Your Honor to read them before you make a ruling.

The Court: All right, pass them over here, Mr. Clerk.

Mr. Fitzhugh: I will pass them, Your Honor.

(Documents read by the Court.)

The Court: No. Now the Court knows of no rule of evidence under which evidence of this kind can be permitted.

Mr. Will Gerber: If Your Honor please, we note an exception and ask that these be read into the record.

The Court: Just identify them here, Mr. Clerk. Give them to the reporter for proper identification.

Mr. Will Gerber: We want to read them in the record.

The Court: Three affidavits, Mrs. Powers, Mr. William Epstein, the uncle, and another one.

Mr. Will Gerber: Yes. I am noting an exception.

The Clerk: How is this—? (857.)

The Court: All right, bring the jury in, Mr. Marshal.

Mr. Will Gerber: Of course, if Your Honor please, we want to offer in the record the certified copies of death certificates of each one of these individuals.

The Court: All right, they can be identified for the record only.

Mr. Will Gerber: That is right.

The Court: All right.

Mr. Will Gerber: Just want to be sure they are in the record.

The Court: Bring them in, Mr. Marshal.

(Said affidavit of Mr. Theo Powers was accordingly marked as Exhibit 7 to the Cross-examination of Mr. Norris, for identification, and same will be found among the exhibits hereto.)

(Said affidavit of William Epstein was accordingly marked as Exhibit 8 to the Cross-examination of Mr. Norris, for identification, and same will be found among the exhibits hereto.) (858.)

(Said affidavit of Mrs. Bessie Moskowitz was accordingly marked as Exhibit 9 to the Cross-examination of Mr. Norris, for identification, and same will be found among the exhibits hereto.)

(Said death certificate of Mrs. Theo Powers was accordingly marked as Exhibit 10 to the Cross-examination of Mr. Norris, for identification, and same will be found among the exhibits hereto.)

(Said death certificate of William Epstein was accordingly marked as Exhibit 11 to the Cross-examination of Mr. Norris, for identification, and same will be found among the exhibits hereto.)

(Said death certificate of Mrs. Bessie Moskowitz was accordingly marked as Exhibit 12 to the Cross-examination of Mr. Norris, for identification, and same will be found among the exhibits hereto.) (859).

(The jury thereupon returned to the court room, and the trial of the case was continued in the presence and hearing of the jury, as follows:)

Mr. Will Gerber: If Your Honor please, we want the record to show that these three affiants are now dead.

The Court: Just a moment. I think the record shows we excused the jury, now, for the purpose of discussing this matter.

Mr. Will Gerber: If Your Honor please, I want to make this statement.

There is nothing in the record as to whether or not he went to see them or not. The only thing about that—

The Court: I think he said he did not.

Mr. Will Gerber: All right. Is that agreed? All right. And we note our exception to Your Honor's ruling.

(By Mr. Will Gerber:)

Q. Now, Mr. Norris, this morning I questioned you about the '52 financial statement, the '49 financial (860) statement, and there was another one introduced here by the witnesses—is that the '45 or '46. There were three bank financial statements introduced. A. I believe there was one dated January 1, 1954.

Q. No, the one in '54 was not permitted to go in the record. There was one '52, one '49, and I think one for either '45 or '46. A. Well, we have them over there.

Mr. Will Gerber: Well, let's get them out.

A. I think it is '45.

Mr. Will Gerber: Let's get the '45 out.

Mr. Norris: —Mr. Sheriff—pardon me.

Mr. Marshal, will you please let him look at that?

Q. Mr. Norris, I want to ask you whether on that financial statement the real estate at 661 East Drive which you have already testified to has been recorded in the name of Mrs. Epstein is shown on that statement? A. It just has buildings (861).

* * *

Q. That is buildings. I am asking you whether there is anything in there about this residence at 661 East Drive? A. I don't see it on the statement.

Q. You don't see it on the statement. That is all I want to ask. Now, just a minute. What is the date of

that statement? A. Financial statement as of February 2, 1945.

* * *

Q. Now, Mr. Norris, I want to ask you if you see anything on that statement—that '45 statement, with reference to thirteen thousand dollars worth of cash surrender value life insurance of Mr. Epstein? A. No, sir.

Q. Don't find it. I want to ask you whether you find any mention of any Investors Syndicate stock that he owned? A. No, sir (862).

* * *

There was brought into this court room a man by the name of Kemmons Wilson. You testified about he and Mr. Epstein and a Mr. Camp taking over an FHA project in Nashville for about two and a half million dollars, and they put up two hundred and fifty dollars apiece to do it.

Has that got anything to do with the net worth calculation? A. Yes, sir.

Q. To what extent? A. Two hundred and fifty dollars.

Q. * * * Now, Mr. Norris, we heard from the deeds and witnesses that Mr. Epstein owned a piece of property at 122-124 Beale. I want to ask you to look at the income tax returns for 1949, '50, '51 and 1952, and tell this jury whether he willfully under-reported any income from that property? Where are the returns? A. Well, if it will save some time—and I believe it will be clear to the Court and jury—I stated, have already stated that as far as the real estate and (863) rental income and dividends, partnership earnings of Mr. and Mrs. Epstein reflected on the returns, for purposes of this lawsuit were accepted and found to be true (864).

* * *

Q. * * * Now, Mr. Norris, you are telling this jury that Mr. Epstein didn't have this accumulation of cash that he says he had, and that he made this money in 1949 and 1950 and '51 and 1952, is that right? A. I did not tell the jury that, no, sir. I showed them the facts that proved that it was—well, rather, I don't want to use that word,

that would not be fair. I have tried to present the facts and let them decide whether it was earned during this period or whether it was earned prior to the period of the indictment.

Q. Will you tell this jury that Mr. and Mrs. Epstein did not have this money prior to 1949? Will you tell this jury that? A. If they want my opinion—

Q. Not asking your opinion. I ask you if you made any investigation to determine that. We have heard witnesses on the stand and the figures—got those here, some of them (865). A. Yes, sir, I think I made a most thorough investigation about those things, and particularly cash on hand; and the money Mr. Epstein stated in his affidavit, and it was later recited on those three affidavits you have introduced.

Q. So you say on the stand right now—you state Mr. Epstein made that money in '49, '50, '51 and '52, is that right? A. I don't say, the facts say—

Q. You say if he didn't have that money, he had to make it in '49, '50, '51 and '52, don't you? A. That is what the facts say, yes, sir.

Q. I am asking you whether you say that. I am not worrying about the facts. I am worrying about you. A. Well, now, if you want me to give my opinion—

Q. I don't want you to give any opinions, any conclusions, anything of that kind. I am just asking you, isn't it a fact that it is your contention that money you say was under-reported in the indictment was made in 1949, '50, '51, and '52? Don't you say that? A. Well, my evaluation and interpretation of the facts certainly would be that.

Q. That is what you say. Now, Mr. Norris, did you make any investigation to determine whether the business (866) category in which Mr. Epstein was in made the money in '49, '50, '51 and '52 that they made in prior years? Did you make any investigation on that score? A. The Revenue Agent had looked into that.

Q. I am not talking about the Revenue Agent. I am talking about you. A. Well, I had the benefit of his work products which were—

Q. No, you put him on the stand, if you want to put him on, but I am talking to you now. Did you—you, the head of the Intelligence, had charge of this investigation—did you make any investigation to find out whether Mr. Epstein could have made the money you now say he made in 1949, '50, '51 and '52? Did you make any investigation to determine that? A. Yes, sir.

Q. How did you do that? A. First—now, this will be a right lengthy explanation.

Q. What I am driving at, Mr. Norris, is this. Why didn't you—that is you—talk to loan firms—? A. I cannot go talk to loan firms—(867).

* * *

Q. Go on. A. First I talked to people at the bank, saw that Mr. Epstein has been borrowing money, large loans, for a period of years.

Mr. Will Gerber: Now, if Your Honor please, I know—

Mr. Fitzhugh: May it please the Court, the witness—

Mr. Will Gerber: Wait a minute.

Mr. Fitzhugh: I am addressing myself to the Court.

Mr. Will Gerber: Go right ahead.

Mr. Fitzhugh: He is stopping the witness every time the answer does not suit him. Now, the witness has a right to answer the question.

Mr. Will Gerber: He isn't—

Mr. Fitzhugh: He asked him a specific question.

Mr. Will Gerber: He isn't going to suit me unless he complies with the rules.

If Your Honor please, I have asked a question of him. He knows what I am talking about. He knows what I am talking about (868). I want to know if he went into a place of business of that type over there and talked to them about business in order to determine whether Mr. Epstein could have made this money in '49, '50, '51, and '52?

The Court: I have the impression the witness was making an attempt to answer the question.

Mr. Will Gerber: No, he is talking about people he talked to at the bank.

The Court: Just a minute.

Can you answer that question, Mr. Norris?

A: Well, yes, sir.

The Court: Go ahead.

A. Oh, certainly you don't want to attempt to make an investigation—go in a place of business and ask them if another place of business, similar business, makes that much money. That would be unfair to Mr. Epstein, or any other person investigated. I would gather—get the facts pertaining to that person. If they are favorable to him, I try to present it. If not favorable, the same thing.

* * *

Q. Mr. Norris, let me ask you this question. Did you make any effort to check the income tax returns of (869) people engaged in the same kind of business as Mr. Epstein to determine what the trend was in that business in '49, '50, '51 and '52?

Mr. Vaden: If the Court please, I object to that question on these grounds—

The Court: Just a moment.

Did you make that investigation, that type investigation?

A. Well, I would answer that not to any appreciable extent (870).

* * *

Q. You say you did not—what was that answer you gave the Court? A. I said I did not compare Mr. Epstein's—the income and profit he reported, to any appreciable extent with other similar businesses. Now, I did take into consideration his prior earnings, and also the J. P. Kirschner statement.

* * *

Q. In other words, you figure merely that because he made forty thousand dollars in '45 during the war period, he ought to make sixty-eight thousand dollars after

the war when business was bad in 1951? You figure he should have made the same amount of money then, is that it? You took into consideration— A. No.

Q. You say you took into consideration the prior year? You did that on that chart you had up there, Mr. Norris, didn't you? A. I draw a comparison of his—

Q. I say, in other words, you took into consideration the fact that Mr. Epstein's business was good in '45, and (871) because it was good in '45 you concluded it had to be the same kind of business in 1951, is that right? A. The chart shows the 1945, 1946, 1947 and 1948 as compared to 1949, '50, '51 and '52.

Q. You are missing my question, Mr. Norris.

You are telling this jury and this Court that because Mr. Epstein made a certain amount of money and his business was good in '45, that you conclude it was good in 1951 and he had to make the same kind of money, is that right? A. I haven't concluded anything.

Q. Isn't that the figures you put up on the blackboard? Isn't that what you are trying to tell us? A. It is not figures; that is the fact.

Q. Figures are figures, yes. You can do anything with figures.

Now, Mr. Norris, I want to ask you—you have introduced here—you have introduced here Dun & Bradstreet reports, March the 24th—or March 14th—March 14, 1947. Mr. Epstein told Dun & Bradstreet at that time: "Interviewed March 6, 1947, William Epstein reported that Net Sales and pawn loans have been off considerably so far this year compared with the same months of last year." (872).

Did you take into consideration that his business had started falling off after the war, in the light of what Dun & Bradstreet said about it or not? A. Well, I took his return he had filed for that year and arrived at that comparison, so certainly it was taken into consideration.

Q. Well, his business was off in '47, wasn't it? A. If it was, the return so shows.

Q. I want to say this to you. I want you to look at the returns, now; I have got them here. Please tell us whether his business in '47 wasn't off compared to 1945.

Can you do that? A. Yes, sir. What were the years, the two years?

Q. What did he report in '45 from Kirschner and Epstein combination? A. What was reported for the—you are talking about net profits for the two businesses?

Mr. Will Gerber: Yes; net profits, yes, sir.

Mr. Bernstein: From the business.

A. For '45 there were $45,213.24 profit reported.

Q. What was reported for 1947? A. $33,949.30.

Q. Business had gone down, hadn't it? A. There was a difference in profit there (873).

Q. Yes. All right. And that is on its statement of Dun & Bradstreet it had gone down, hadn't it?

What did it do in 1948? A. In 1948—now, I have some figures in connection with '48 that I can supplement—

Q. I am asking you for figures off the return. A. He only reports for the year '48 $22,080.91.

Q. How much? So business had gone down some more, hadn't it? A. I found that had not gone down with '48.

Q. You mean by the figures here with these charts you have got up here you can do satisfactorily what I am talking about? A. According to the same type figures that were produced here for '49 through '52, he had failed to report in 1948 $40,168.35.

Q. You mean that is on your recalculation based upon previous business, isn't it? That is what you are basing it on? A. No, sir, this is my—

Q. Well, tell us how he failed to report it? A. He failed to put it on his tax return.

Q. How—where did he get it? Not talking about on the tax return (874). A. You mean the source of the money?

Q. Yes, where did he make the money he did not put on the tax return in '48? That is all I want to know. A. All right, I will be glad to go back to the chart again.

Q. No, that is what I said a while ago; you want to tell us by those figures you have up there. I am asking

you now, did you make any investigation in this light of this Dun & Bradstreet to try to determine—talk to people and examine income tax returns which are at your disposal—I know I can't look at them, but you can—to see what the trend of that business was in '49, '50, '51 and '52, as compared with prior years?

I don't care about figures—those figures and aughts—those aughts, or those aughts. I am talking about trends now--trends—other people engaged in that kind of business? Did you do that? A. I had a better way to do it.

Q. Not talking about a better way t do it. I ask you—did you? A. No, sir.

Q. I ask you, did you do it? A. I did not go bother a lot of people with that (875).

Mr. Will Gerber. That is all I want to know. Now, I want the record to show that the Dun & Bradstreet report I was reading from is Exhibit 1—what is this—Exhibit 1 to Johnson? It looks like Exhibit 1 to Johnson.

Q. Mr. Norris, did you go to the trouble of sitting down in this business and talking to any of the sales people that work in those stores to find out whether business was good or bad in '49, '50, '51 and '52, as compared to prior years? Did you do that? A. Any of Mr. Epstein's employees—?

Q. I am talking about all employees everywhere in this category. A. In the pawn loan and sales business?

Q. Yes, sir, the pawn business. Did you go down and talk to the people who worked in these places to determine how business was in '49, '50, '51 and '52, as compared to prior years? Did you do that or not? A. That would not be good—

Q. Did you do it or not? A. I had a better way of doing—

Q. Did you do it or not? A. I did not do it (876).

* * * *

Now, Mr. Norris, in 1952—you have testified about it—Mr. Epstein entered into a partnership with a nephew of his, is that right? A. So he said, yes, sir.

Q. You testified about it. You have a copy of the partnership return—you don't have the original, but there

has been a copy introduced in evidence. I want you to look at it.

Where is the copy? Do you have it up there? A. I have one that I call mine—rather, I did have.

Mr. Will Gerber: He has got a copy of it, I am sure.

A. Mine seems to have been borrowed or misplaced.

Q. Let me ask you this question. Mr. Norris, let me ask you to look at this 1952 return. How much income did Mr. Epstein report from that partnership business in that return? A. Epstein, $5,328.17.

Q. How much did Maynard Epstein report, if you recall? You have talked to him? Did he report the same amount? A. I believe it was the same amount.

Q. They are partners. Why didn't you indict him? You are charging Mr. Epstein—this was a partnership in 1952—you are charging Mr. Epstein—(877).

Mr. Fitzhugh: May it please Your Honor, Mr. Norris hasn't indicted him.

Mr. Will Gerber: Well, I want to ask him, if it is the last thing I do, if Your Honor. please.

Mr. Fitzhugh: The Grand Jury did.

Q. You say Mr. Epstein under-reported some of the income. He had a partner in '52. Why didn't you charge him in the indictment with under-reporting?

Make you a speech. I don't care how long you talk, now. A. The Gand Jury—

The Court: Just a minute. The Court rules that question out, and the witness will not have to answer that.

Mr. Hodges: Why, of course not.

Mr. Will Gerber: We note an exception, if Your Honor please.

The Court: Why didn't he indict somebody—?

Mr. Will Gerber: I asked why he did not present it. He has presented this case for indictment, and the rest of them. Your Honor has seen this spectacle in this court room, with him sitting on the stand directing traffic.

The Court: This man is a witness in (878) the case.

Mr. Will Gerber: I know fully he is a witness. He is prosecuting the case, too.

The Court: No; no.

Mr. Will Gerber: Oh, yes, he has initiated this prosecution.

The Court: Objection sustained.

Q. You did not indict him, then?

Mr. Fitzhugh: Your Honor has ruled on it once—asking him why didn't he indict him.

Q. I am asking, did you present for indictment—did you refer to anybody for indictment—?

The Cou : Just a minute, Mr. Gerber. That is a very plain proposition. The District Attorney presents cases to the Grand Jury for indictment.

Mr. Will Gerber: Well, let me ask it this way, if Your Honor please.

Q. Did you make any report to your superiors recommending a prosecution?

The Court: Well, it is time for another recess, gentlemen. Take out about ten minutes.

(Recess.) (879).

* * *

Q. Mr. Norris, will you answer this question, please, sir? Will you tell us whether you have recommended to your superiors a criminal prosecution against Maynard Epstein?

Mr. Hodges: If Your Honor please, I am going to object to that.

Mr. Will Gerber: Why, if Your Honor please—Go ahead, I won't stop you. I want to be heard on it, though.

Mr. Fitzhugh: We are trying this defendant.

Mr. Will Gerber: If Your Honor please, here is a case where it is admitted by this witness that there was a partnership in '52 between Maynard Epstein and William Epstein, and he recommended prosecution against William Epstein (880) for 1952 and charged him with the entire amount that he claims he under-reported on that year, when the man had a partner. I have got a right to find out, if Your Honor please, why he did not recommend a criminal prosecution against Maynard Epstein.

The Court: The Court in effect has already ruled—

Mr. Will Gerber: Sir?

The Court: The Court in effect has already ruled on that proposition, I think. If I have not, I now rule that it is not competent.

Mr. Will Gerber: Not competent—

The Court: The objection is sustained (881).

* * *

Q. Nat Epstein and this defendant both told you that he contributed twelve thousand five hundred dollars from 1941 to 1947, thirty dollars a week, for a nurse to take care of his child. I want you to tell this jury why you refused to accept that in your so-called net worth computation? A. I did not refuse to accept—

Q. You did not do it—? A. Mr. Gerber, in fact, I gave it serious consideration. I believe he did contribute some money. The facts show that he did. There was a reason I did not add in—I believe there is some twelve hundred dollars a year household contribution—was because there had been no food at all included in the personal living expenses—very nominal amount, two—three—four hundred dollars a year for food, and I considered that certainly Nathan Epstein contributed the amount that he did.

Q. Why didn't you give him credit for it? A. (Continuing) —And that would apply on the food, and therefore, since I had not charged Mr. Epstein with (884) any money disbursed on food, I eliminated that.

Q. You were the judge on that, is that right? I say, you were the judge on that and you decided you would not give him credit on it? A. It was not my decision. It was just a matter of putting the facts as they were and trying to be as fair as possible to Mr. Epstein and to the jury.

Q. Well, I am trying to find out where you have ever been fair to Mr. Epstein. That is what I am trying to find out now.

Why didn't you give him credit for that twelve thousand five hundred dollars that he and his father both

said he contributed for a nurse to take care of his little girl from '41 to '47, if you want to be fair about it? Why weren't you fair enough to give him credit there? A. I gave him credit—

Q. You didn't on this thing. Show me anywhere in the net worth computation you gave him credit for that twelve thousand five hundred dollars. I want to get them out. Show me where you gave it to him. A. This twelve thousand you are talking about goes back to the year 1941.

Q. '41 through '47, that is what I am talking about. A. There is not a figure in the net worth computation (885) that pertains to the year '41 through '47.

Q. Mr. Norris, let's quit quibbling about this thing. Did you or not give Mr. Epstein credit for the twelve thousand five hundred dollars in your net worth computation? A. Well, I will state again that the net worth computation begins at the beginning of 1949.

Mr. Will Gerber: Umhum.

A. (Continuing) And you are talking about some several years prior to that time, '41 through 1947.

Mr. Will Gerber: That is true.

A. I don't have any—I don't have any computation, for purposes of this trial, covering those years. I haven't even computed anything for or against Mr. Epstein, so far as tax purposes—

Q. Is he entitled to it? Is he entitled to it? A. If—and I am inclined to think—I considered that he was entitled to it, yes, sir (886).

* * *

Q. Mr. Norris, you investigated this case, is that right? A. Yes.

Q. And made a thorough investigation of this case. You found from the financial reports that Mr. Epstein (889) was only supposed to have about twenty thousand dollars in cash, is that right—approximately? A. In that neighborhood.

* * *

A. I think twenty to thirty, something like that.

Q. I see. You found that he had made a great many investments in 1949, '50, '51 and '52, is that right? A. Yes, sir, he had.

Q. And because of the fact that you found that these financial statements show that all he had was twenty thousand dollars in cash, you concluded that he must have made the money in '49, '50, '51 and '52 to make those investments in real estate and otherwise, is that right? A. No, sir.

Q. Why, Mr. Norris, I want to ask you this question. If you had not had the financial statements, how could you have arrived at the opening cash? A. I still—

Q. I am not asking still. Just tell me how you could arrive at the opening cash. A. All right, I will have to—it is not just reaching out and arriving at a figure. I would have first used all of his prior earnings and his expenditures as far back as 1920, which we put a chart in here to show (890) that. That chart showed he spent more than he earned, some twenty-nine thousand dollars. That would indicate to me that at least he might have had some fund there, but—

Q. You are guessing at that, aren't you? A. Sir?

Q. You are guessing at that, aren't you? A. I am not guessing.

Q. Well, you haven't got any figures on it? A. I have got the chart there.

Q. But most of those charts are guess-work, aren't they? A. No.

Q. No guess-work, no inferences—no inferences are being drawn, are they? Everything you say is just hotsy-totsy, is that right? A. I don't know—what was the phrase?

Q. Hotsy-totsy. You have heard that before. A. Well, I don't think so.

Q. Mr. Norris, don't you know—don't you know that if you hadn't had these in ccurate, unsworn, informal financial statements, you could have never arrived at any opening cash on January 1st of 1949? Don't you know that? (891).

I just want you to give me a yes or no answer; then you make all the speech you want. A. Yes, I still would have arriyed—

Q. You say then you would have arrived at it? A. I believe so.

Q. But that is what you used—that is what you used—you used those financial statements to create the opening cash, is that right? A. They were so close in accord with what he told me at the November 19th conference and in line with other corroborating evidence that I took into account that it could not be too far wrong one way or another.

Q. And notwithstanding the fact that—notwithstanding the fact that he furnished you the affidavit in which he told you that he had this Kirschner money and had Mrs. Epstein's money, you of course disregard that and would not take that into consideration in the opening cash, is that right? A. I considered that very seriously, everything he said in that affidavit—

Q. But you did not give it— A. (Continuing) —because he said—his affidavit said that he had some—some one hundred—close to one hundred seventy thousand dollars cash on hand at (892) the beginning of 1948.

And naturally, since I had—based on the facts that I could gather, the most cash on hand that I could account for on the information that I accumulated was somewhere between twenty and thirty thousand dollars.

Q. And you made that decision yourself? A. If I could have built that cash on hand up to one hundred and sixty-eight thousand dollars like he stated in the affidavit—if I could have found any evidence to support any more than some twenty thousand dollars—twenty or thirty thousand dollars, I would certainly have used it, and—well, I would have changed my figures much larger.

Q. You gave it very serious consideration and decided against it, is that right? A. I did give it very serious consideration.

Q. And decided against it, is that right? A. I stuck with the facts and evidence in that connection (893).

* * *

Mr. Fitzhugh: No redirect examination.

(Witness excused.)

Mr. Fitzhugh: And the Government rests its proof in chief.

The Court: Is there a motion at this time, gentlemen?

Mr. Hal Gerber: Yes, sir, we wish to make a motion.

The Court: All right, take the jury out, Mr. Marshal.

(The jury thereupon retired from the court room, and the following occurred out of the presence and hearing of the jury:)

Mr. Hal Gerber: May it please Your Honor—

Mr. Will Gerber: Has the Government rested?

Mr. Hal Gerber: Yes (897).

At this time the defendant moves that he be acquitted of this charge and the Court dismiss the charge in all four counts of the indictment against him, for the following reasons.

Primarily and generally the defendant says that there has been no substantial evidence introduced in this case upon which he may be convicted.

To be specific—to be specific, that is, the Government has failed to prove the corpus delicti. It has failed to track down leads pursuant to the admonition of the Holland case. And it has failed to prove willfulness.

Of course we understand, all of us, that the burden of proof in these cases rests with the Government throughout the trial.

We are further familiar with the admonition of Justice Clarke in the Holland case that in a pure net worth case, which this is, the net worth computation is based on the opening net worth figure. That figure need not be proved to mathematical certainty, but it must be proven to a reasonable degree of certainty. In this case the Government undertakes to bottom the opening net worth upon extra-judicial statements made by the defendant in a conference at Nashville, and upon financial statements submitted to Dun & Bradstreet (898) and to the bank.

Inasmuch as opening net worth must be proved in this case in order to prove the corpus, and inasmuch as the Government has undertaken to prove opening net worth through these extra-judicial statements, we submit, Your Honor, the case of Smith against U. S., one of the companion cases with Holland, 348 U. S., page 147.

In that case, defendant had made extra-judicial admissions to the agent investigating the case where he said he had about fifteen thousand dollars in total assets at the beginning of the period. Upon the trial of the case, proof was adduced by the defendant to show that he had much more money than that at the beginning. In discussing the proposition, Justice Clarke said that although there is no tangible injury in a net worth case that can be isolated as a corpus delicti, such as may be done in a homicide case, nevertheless the corpus must be proven, and must be proven with the dignity of proof that would apply to a homicide case. That the corpus is what we call in the vernacular a running corpus in this case and can't be proven until the evidence is all in so net worth can be finally established. But he advises, (899) if Your Honor please, that this opening net worth, if it is sought to be proved by extra-judicial statements, must be corroborated.

Now, there are two means, Justice Clarke says, by which extra-judicial statements may be corroborated. First, by direct proof that tends to corroborate specifically—substantial direct proof which tends to corroborate specifically the opening figure. Or, two, by proof of the crime of tax evasion independent of the opening figure.

Now, we have a rather curious proposition in this case. We have Norris testifying from the stand that he was undertaking to prove an extra-judicial statement made by Mr. Epstein at Nashville by the extra-judicial financial statement given to the bank, which in turn was undertaken to be proved by the extra-judicial statement given to Dun & Bradstreet. So that is an extra-judicial statement as based upon another, and another, and another. And perhaps if we go on long enough we might get somewhere.

That is Agent Norris on the law. That is not Justice Clarke on the law. Justice Clarke means—obviously

means that there must be some proof adduced in this record which will show that those opening (900) figures have been substantiated.

We submit to Your Honor that, independent of the question of corroboration of these financial statements, that the financial statements show on their face and by all the proof adduced by the Government show that they are incorrect. That has been testified to—that has been testified to by Mr. Scott, who, incidentally, also testified that the records were correct, but Mr. Scott specifically stated that if there were assets which the defendant possessed at the time those statements were given which were not included in the statement, the statement would not be correct and would therefore be inconsistent. And if that is the case, the opening net worth cannot be bottomed on such a statement unless it is corroborated or unless it is shown that all the assets of defendant were reflected by that statement.

Now, Agent Norris has testified, and the financial statements so show the fact that Mrs. Epstein's property was not included—any of it—and some of Mr. Epstein's property was not included, and the cash was not included.

Now, the Government seeks to establish the (901) net worth of Mr. Epstein, corroborate it by including the combined assets of Mr. and Mrs. Epstein, on the one hand, to show net worth, and try to get an increase in net worth, yet they refuse to give Mr. Epstein credit for assets which his wife had during this period and were not shown on those financial statements.

Now, I ask Your Honor, is that fair? Is it competent evidence—? It is competent evidence, but is it corroborative evidence? Is it substantial evidence that tends to prove the crime of tax evasion through these statements?

And I respectfully submit to Your Honor there is no such way it would be competent.

Let's look at the proposition—the financial history of the business. There are methods by which the opening statement can be corroborated—prove the crime of tax evasion independent of the opening statement. One type proof under this Holland case was brought to bear here,

Your Honor. In that case, Smith case, one of the companion cases, it was shown that defendants in all prior years were practically impoverished; that they had filed petition in bankruptcy, that they had been foreclosed, and that (902) they had no money, and that reduced the people's increase in net worth to a specific period.

There it was positively proven that the defendant was operating a business capable—capable of making that increase, and that that is where the increase came from. There hasn't been a line of any such proof in this case.

Consequently, we say to Your Honor that the opening net worth statement has not been corroborated, that the corpus delicti has not been proven.

And we re-affirm—re-assert—and insist now on our objection to the evidence that was introduced here by showing these financial statements before the corpus was proven. It was not proven then; it is not proven now; and we object again to it.

We object to the manner in which the charts were introduced, because they were argumentative, because they did not contain the evidence as it had been adduced previously. And we insist that our objection to that evidence now be sustained, and the Government's case be dismissed for that reason.

One other item. I have undertaken to discuss the problem of opening net worth without relation to the case. The proof here shows that Mr. Epstein (903) was not given credit for Mrs. Epstein's cash and the Kirschner cash, because Agent Norris did not desire to give him that credit. He did not believe that he had it, apparently.

The Government has introduced witnesses in this case—Mr. Gerber and Mr. Dwyer—Commissioner Dwyer, both of whom testified—Mr. Dwyer testified that he had seen there large amounts of money in '47 in that vault of Mr. Epstein down on Beale Street, and Mr. Gerber, the Government's witness, testified that shortly after the war, about at the same time, Mr. Epstein sought to insure one hundred twenty-five to one hundred fifty thousand dollars which he had in cash.

We say that the whole proof—the Government's proof shows that they have not carried the burden in this case

and they have not proved this case beyond a reasonable doubt.

What about the leads that have been offered?

It is stated here that financial statements from banks were offered to the Government. Yet it is also stated by Agent Norris that he did not take the trouble, and never has taken the trouble to go down to the bank to discuss those statements with (904) the bank, the people to whom the statements were given.

The Government has failed to check Mr. Epstein's financial history, which goes back to 1912, and I think—starts at 1929, I am sure—I don't know, because there were eight years which the Government had full knowledge of, as they had Mr. Epstein's affidavit. That no effort was made to examine other names of people—affidavits of people which have been excluded from the jury by Your Honor was given the Government, but they never once undertook to talk to any of these people.

It has been testified to by Agent Norris that he never even checked the books and records of Mr. Epstein. He can't say whether these books were adequate for the Government's examination, pursuant to the admonition of the Holland case that it may compute a net worth statement only if the agent determined that the books are inadequate. The Holland case does not say the Government is relie ed of proving to the Court and to the jury the books were inadequate.

I submit to Your Honor that there is not a line of proof in the record to show that these (905) books are inadequate. They have been here for a week, and there hasn't been one man to take the witness stand for the Government to pick up one book to show us where they are inadequate. There has been some testimony as to verification, but there has not been any testimony to leads offered the Government that Louis Weiss, who made up these books here that have been examined by the Government—accurate books; it is true Mr. Weiss was here, subpoenaed by the Government, but the Government did not pick a figure out. Also, Mr. Katz, who handled some of these records there on Beale Street, was

here subpoenaed. But they did not use them, and sought to get some of that evidence in through Agent Norris, and we want to object again to that evidence.

It has been shown here Agent Norris never made a check to determine whether or not this business was capable of making money to increase the net worth which he claimed Mr. Epstein under-reported—books, Beale Street—anywhere—books, Beale Street, anywhere, to determine what the trend of business was during those years.

And lastly, Your Honor, we say the Government (906) has failed to prove willfulness. The Holland case said willfulness may be assumed when there is some specific discrepancy shown in the books. There has been no such discrepancy shown in this case. It further says that an understatement of income, even an understatement of income, if proved, does not in and of itself prove willfulness unless taken with conduct, the likely effect of which will be to mislead or conce-

I submit, Your Honor, that there has been no such testimony adduced in this case. So that by neither test can willfulness be inferred to this defendant on the basis of the admonition of the Holland case and numerous other cases that have been decided since that time.

And so we say, Your Honor, in conclusion, that by any test or rule laid down by the Supreme Court of the United States, beginning with Holland and going forward, have the elements necessary to establish net worth as a basis for proving the defendant under-reported his income been established.

And I would like to say this to Your Honor. As a matter of law—Your Honor having been a prosecutor himself is familiar with it—this is (907) circumstantial evidence—as a matter of law under such a procedure, the Government must exclude every reasonable hypothesis inconsistent—other than the hypothesis of guilt, or any hypothesis inconsistent with the guilt of the defendant.

And I submit to Your Honor, that they have not done it.

We respectfully submit that this defendant at this time should be dismissed.

The Court: No, it is a proper case for the jury. It is a case for the jury under proper instructions.

The motion is overruled (908).

* * *

Defendant's Proof.

* * *

EUGENE F. BESPALOW,

having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. State your name to the Court and jury. A. Eugene F. Bespalow.

Q. Mr. Bespalow, what is your business? A. I am vice-president and chief engineer of Choctaw, Incorporated.

Q. How long have you been with them? A. Twenty-eight years.

Q. Mr. Bespalow, do you know the defendant in (913) this case, William Epstein? A. Yes, sir.

Q. How long have you known him? A. About twenty-five years.

Q. I will ask you if you know, or think you know his general reputation in this community among his friends, neighbors, and acquaintances for the qualities of honesty and integrity? A. Yes, sir.

Q. Is that reputation good or bad? A. Very good (914).

* * *

WILLIAM A. McTIGHE,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury, please, sir? A. William A. McTighe.

Q. How long have you lived in Memphis, Mr. McTighe? A. Forty-four years, Mr. Gerber, with the exception of three years, Mr. Gerber, I was gone.

Q. What is your business or profession? A. I am a practicing lawyer at the Memphis bar.

Q. For how long? A. Twenty-four years, taking away that three years again (915).

Q. Have you ever held any official position in the Veterans of Foreign Wars? A. Yes, sir, I have. I was the first World War II veteran to be Commander of the Veterans of Foreign Wars, Post 684, and the Tenth District Commander.

Q. I will ask you if the defendant in this case, William Epstein, has been associated with the Veterans of Foreign Wars? A. He has.

Q. For how long? A. Well, Mr. Gerber, before my time, and I joined the organization after my return from service in October, I believe, of 1945.

* * *

A. (Continuing)—And that is when I made Mr. Epstein's acquaintance.

Q. I want to ask you whether Mr. Epstein has served in any official capacity in the Veterans of Foreign Wars? A. Yes, he has, Mr. Gerber. He is past Post Commander, and he has served as chairman of practically every committee, Citizenship Award, Veterans Rehabilitation, Relief Committee for Needy Veterans.

Q. I will ask you if he served well on the committee for Relief of Needy Veterans? (916.) A. Yes, sir, he did. I think I appointed him on that committee during the time I was Post Commander, and he served very well. His job there was to help any veteran who was in distress. We gave him a very small fund to do it, and Mr. Epstein used his funds and kept our money.

* * *

Q. Mr. McTighe, I will ask you if you know, or think you know, the general reputation of Mr. Epstein in this community among his friends, neighbors, and acquaintances for the qualities of honesty and integrity? A. Yes, sir, I know it.

Q. Is that reputation good or bad? A. That reputation is good. (917).

* * *

LOUIS T. WEIS,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bernstein.

Q. Would you state your name, please, sir? A. Louis T. Weis.

Q. What is your business, Mr. Weis? A. Public accountant.

Q. How long have you been in public accounting? A. Since February 3rd, 1943. (918).

* * *

Q. What was the date, please? A. Since '43.

Q. I will ask you, Mr. Weis, if you are related to the defendant, Mr. William Epstein? A. No, I am not.

Q. I want to ask you if you are associated in public accounting practice or anything else with any members of the defense, Mr. Deutsch or myself? A. No, I am not.

Q. Were you subpoenaed here for the Government, Mr. Weis? A. Yes, I was.

Q. Would you tell me, sir, what period of time you worked on Mr. Epstein's books? A. I believe from 1949 through 1952. No, from '49 through 1954.

Q. I would like to show you these books and ask you if those are the books you worked on? A. Yes, sir, these are the books.

Q. Mr. Weis, did Mr. Epstein hire you to set up that system of bookkeeping and take care of it? (919). A. Yes, he did.

Q. And did you do that? A. My office and myself did.

* * *

Q. Did he direct you in any way as to how to set up that bookkeeping system? A. No, he did not.

Q. I ask you this, Mr. Weis. Are you acquainted with Regulation 111 of the Internal Revenue of 1949? A. No, I am not.

Q. That Regulation with amendments of October 5, 1949, Section 29.41-3, Methods of Accounting:

"It is recognized that no uniform method of accounting can be prescribed for all taxpayers. The law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his judgment best suited to his purposes. Each taxpayer is required by law to make a return of his true income. He must, therefore, maintain such accounting records as will enable him to do so."

I want to ask you whether or not in your opinion those books which you have right there comply with (920) that Regulation? A. I believe they do.

Q. I want to ask you whether or not you keep the same type books on other types of business? A. For many businesses.

Q. Quite a few? A. Quite a few.

Q. Have any of these other businesses ever been checked by the Internal Revenue? A. Yes, they have.

Q. Has the question of the adequacy of those books ever come up on those checks? A. Never.

* * *

Q. I want to ask you this, Mr. Weis. Could these books which you kept for Mr. William Epstein from 1949 through 1952 be verified—could they be verified—is it possible for them to be verified? A. Yes, it is possible for them to be verified (921).

Q. Can you tell me how most of the expenditures were made, how were they paid for? A. Most of the expenditures were paid by check.

Q. During the period you worked on those books, who wrote the checks? A. I, or my office—most of the checks were written predominantly—mostly, I am sure.

Q. Did you write those checks from invoices that were presented to you for purchases of merchandise, and so forth? A. Yes, I did.

Q. And you say that most of the expenditures were made by check, is that correct? A. That is correct. Now, that is except for the loans.

* * *

A. (Continuing) The loans were paid out of the cash drawer. Mr. Epstein made those in cash.

Q. Yes. Now, Mr. Weis, how often would you work on the books? A. On this set of books?

Q. I mean, a question of posting them, yes, sir. A. Once a month.

Q. And where did you get the information from that (922) went on those books? A. The information came from the checks, from the bank. I would get the cancelled checks out of the Manhattan Bank. The various income, the interest, and the sales and redemptions came from the store, and the loans came from the store.

Q. When you say they came from the store, how did they come from the store? Can you describe that more clearly? A. It was presented to me in a memorandum form.

Q. Presented to you by who? A. Well, one of the clerks in the store.

Q. One of the clerks in the store? A. Yes, sir. I think it was, as a rule, Sonny Epstein.

Q. When you say Sonny, you mean Maynard Epstein? A. Mr. Maynard Epstein.

Q. Now, do you know of your own knowledge where Mr. Maynard Epstein got the information? A. I don't exactly, but I presume it came from the cash register.

* * *

Q. So that you would get the information as to (923) sales and checks, and so forth, and then you independently would post them to these records? A. That is correct.

Q. You do that with the other customers—that is your clients, you do in the same manner? A. Same manner.

Q. Now, Mr Weis, you said that these books could be verified? A. Yes.

Q. Would you tell me, if you were doing it, how you would verify loans, that one item? A. Well, loans are kept—there is a record kept for the loans for the police department. Each loan that is made is numbered and put on a separate card, and then put on a police rec-

ord, and this record is checked up daily by the police department. So every one of them, of course, could be checked against the total, the daily total which appears on this ledger.

Q. Is that also true of redemptions? A. The police record is not made for the redemptions, but there is a record of redemptions on each card. Each loan that is made on a card, there is a marking showing that the loan has been redeemed.

Q. Now, during the period of time that you worked on (924) these books, from 1949 through 1952, did Mr. Epstein ever on any occasion come to you and ask you to change those books or try to influence the manner in which you were keeping them, or get you to alter anything or put in anything that you felt should not have been in here, or change anything whatsoever about keeping the books? A. He never spoke to me at any time about the way I was keeping them, the whole time.

Q. I want to ask you, Mr. Weis, whether you know business was good or bad on Beale Street from '49 through '52? A. I would not say it was bad, but it was not up to the years during the War or right after the War. It was slowly coming off of those peak years, I am sure.

Mr. Bernstein: Your witness.

Cross Examination by Mr. Vaden (925).

* * *

RAYMOND L. ALLEN,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury, please. A. Raymond L. Allen.

Q. I think you are known as Mike Allen? A. Yes, sir, that is my nickname.

Q. Mr. Allen, how long have you lived in Memphis? A. I will be telling my age, but it is fifty-four years, all my life.

Q. What business are you engaged in, Mr. Allen? A. Schneider's Modern Bakery.

Q. How long have you been with that firm?. A. Twenty-eight years.

Q. Mr. Allen, do you hold any official position (935) in any fraternal organizations or lodges here in the City of Memphis? A. Yes, I have.

Q. I ask you whether or not you have ever been potentate of the Shrine? A. Yes, sir, 1952.

Q. I want to ask you whether you have ever been the master of any Masonic lodge? A. Yes, sir, I was master of Leila Scott Lodge in 1941, and I was grand master of the State in 1954.

Q. You were grand master of all Masonic lodges of the State in 1954? A. Yes, sir.

Q. Do you know defendant in this case, William Epstein? A. Yes, sir.

Q. How long have you known him? A. Approximately twenty-five years.

Q. Mr. Allen, I will ask you to tell the jury whether you know or think you know his general reputation in this community among his friends, neighbors, and acquaintances for the qualities of honesty and integrity? A. I think I do.

Q. Is that reputation good or bad? (936.) A. I would say it is good.

* * *

MISS RAE EPSTEIN,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury, please, ma'am? A. Rae Epstein.

Q. You are the sister of the defendant on trial?. A. I am.

Q. Miss Epstein, I will ask you where you and your family were living in 1912? A. At Luna Landing, Arkan-

sas. My father, my (937) step-mother, my three brothers, and myself.

Q. At Luna Landing, Arkansas?

* * *

Q. I just want to ask you, Miss Epstein, whether your brother Will left Luna Landing in about 1912?. A. He did.

Q. Will you tell us why he left? A. Yes. Will was the oldest of the children, he was eighteen, it was a very, very small town, there was nothing for a boy that age to do; he had been helping my father with his activities, which were the farm, gin, the gin-farming operation that you have, buying furs in the winter, and my father thought it was time for Will to leave that little town where he couldn't get any—have any opportunities there, to come to Memphis.

Q. Did Will come to Memphis at that time? A. He did.

Q. I want to ask you if, at that time, your father gave Will any money? A. Yes, sir, he did (938).

Q. Do you remember approximately how much he gave him? A. Yes, I remember exactly. He gave him $3,500.

Q. Do you know for what purpose? A. Yes, to come up here, and if there was an opportunity opened up to try to get into a little business of some kind.

Q. A little business. Miss Epstein, after your brother Will left in 1912 and came to Memphis, did you go anywhere? A. Yes, I went to St. Louis to school in 1912.

Q. You say you went to school. What was the reason you left school in 1914? A. Because my father was killed suddenly, was thrown from a horse and was killed suddenly.

Q. I see. Miss Epstein, at the time your father died, I ask you whether your brother Will came back down there from Memphis? A. He certainly did. Immediately after the funeral—

Q. After the funeral, did he return to Memphis or did he remain? A. No, the funeral—my father was bur-

ied here. He was brought here. I came from St. Louis, and we were all here, and we all went right back down to Luna together (939).

Q. Miss Epstein, how long did your brother Will stay around Lake Village or Luna Landing after your father died in 1914? A. He stayed until the early part of 1917.

Q. I will ask you if during that period he was courting anybody? A. Yes, sir. When he came back he was engaged to his present wife.

Q. Engaged to his present wife. How long did he remain, you say, there? A. He came down in November of 1914, and he stayed until the early part of 1917.

Q. Early part of 1917? A. About March, I think.

Q. I will ask you whether during that period his present wife visited him there and he came up here and visited her? A. Yes, sir.

Q. Did you leave Luna Landing at any time? A. Yes, I left in 1915.

Q. And where did you go? A. Memphis.

Q. Came to Memphis? A. For the same reason he did (940).

Q. For the same reason he did? A. Yes.

Q. Where did you stay when in Memphis? A. I stayed with my brother's fiance and her mother and stepfather.

Q. I see. Miss Epstein, you say your brother returned sometime in 1917? A. Yes, sir, he did.

Q. And he got married after that? A. Yes, sir, shortly afterwards.

Q. Who did he marry? A. Pearl Murray, who is now his wife.

Q. Pearl Murray. I want to ask you if, prior to the time he married his present wife, whether she was working anywhere here in the City of Memphis? A. Yes, sir.

Q. Who did she work for? A. Well, she worked for the Referee in Bankruptcy for a good while, and, well, I think it was after they were married, she worked for the Delta Land Company, but I know she worked for the Referee in Bankruptcy a good while.

Q. Do you remember who he was? A. Mr. Hornsby (941).

Q. Mr. Hornsby. Miss Epstein, atfer he married—did he marry sometime in '17? A. Yes, he married June 3rd.

Q. And after that, I will ask you do you know where he worked or what he did in the City? A. Yes, sir. He worked for Mr. Lerner or Mr. Lippman, I am not sure about that. I believe it was Mr. Lippman.

Q. Was that down on Beale Street? A. Yes, sir.

Q. After he got married, will you tell where he lived? A. He lived with his mother-in-law and step-father-in-law.

Q. Miss Epstein, from the time that he came back to Lake Village or Luna Landing—I get those towns mixed up—until he came back in 1917, what did he do down there? A. As I have stated, my father had several interests. We had a little gin, we had a farm, we furnished some tenants on other plantations, and they bought furs and, of course, it was an involved thing. As long as my father was living, it all went smoothly. When my brother came down to operate it, he worked there, he operated the farms and gin and he helped—my father, he was administrator, there was not a will—(942) to wind up the estate, and he worked for the Levee Board, and he bought furs every year.

Q. Do you know whether or not he made any money during that period of time? A. Yes, sir, he made money. Will certainly made money.

Q. Before he came back to Memphis—did he come back to Memphis with a considerable amount of money? A. Yes, sir. I know what he did. He had saved what my father had given him, and he had added to that, when he came down, because when he got here, we discussed it; when he came back, he decided he would like to go into the pawn business and did not have enough money and was biding his time saving for that purpose.

Q. Saving for that purpose. Miss Epstein, after he came back to Memphis in 1917, will you state whether or not he worked anywhere on Beale Street? A. Yes, sir.

Q. How long did he work? A. He worked until 1918 or when he went in the Army.

Q. He worked until 1918. How long did he remain in the Army? A. I think thirteen months.

Q. Where did you live while he was in the Army? (943.) A. I lived with his wife and mother-in-law.

Q. I see. Miss Epstein, do you remember if anything occurred while he was in the Army? A. Yes, he was wounded in the St. Mihiel Drive, and after he was wounded, he carried two of his buddies to safety, and was later given a citation for bravery, and, of course, the Purple Heart. He is still carrying a piece of shrapnel in his body that is somewhere.

Q. When your brother Will came back from the Army, I guess it was some time in 1919? A. Yes, sir.

Q. Did he bring any money with him? A. Yes, sir.

Q. Much or little? A. A lot.

Q. Did he say where he had obtained that money? A. Might be considered a little now, but it was a lot then. Yes, he had a money belt.

Q. Did he say where he got it? A. Yes, sir, after he was wounded, he was hospitalized, and he stayed in the hospital for the remainder of the war. As I remember it, he was in the Post Office. And boys—naturally, when a bunch of boys get together, you know what happens. Well, on the ship Will had been (944) quite lucky and was very proud of it, and laughed and told us many incidents that happened, and that he had been lucky and won quite a lot of money.

Q. I see. Miss Epstein, I will ask you if at any time after that he went in business with anybody? A. Yes, sir, he went to work when he first came back for just a short time I think, and then went into partnership with Mr. Karnowsky.

Q. Did he stay in business with Mr. Karnowsky very long? A. A few years, yes, sir.

Q. Ma'am? A. Yes, sir, a few years, several years.

Q. Ma'am? I will ask you whether if after that time he went in business for himself? A. Yes, sir, after he

dissolved the partnership with Mr. Karnowsky, he went in business for himself.

Q. And whether he has been in business for himself ever since that time? A. Yes, sir.

Q. I want you to state to the jury what has been the condition of your brother's health? A. Well, when Will came back from the Army, of course he was quite nervous for a long period of time. I (945) think I will take this in sequence, if you don't mind. He had a nervous breakdown in 1927, and during that period, while he was still sick, we lost the brother between Will and myself very suddenly—he was only sick a week and passed away, and he reacted very badly to that.

I will take that back to tell you that we lost our mother and father both when we were very, very young, which I imagine has its effect on anybody. Well, when we lost our brother, that was the first death after he was grown, and he reacted very badly to that.

And then he was quite ill some time in 1936, and it took him months to get over it. And then of course in '54—on in '54—well, my brother, youngest brother got sick in '51 and passed away in '53. My brother was very upset and nervous about it. And then following that, his wife became very, very ill. In fact, we did not expect her to live. She was at home in bed five weeks, in the hospital seven weeks. There was an exploratory done on her, thinking she had cancer. And during that period of time my brother was—he just was very, very upset when he went to business, and I understand that he just sat there in a chair and did nothing all day, and for several weeks his son (946) just went everywhere with him, would not allow him to drive the car or anything.

Q. What is the condition of his wife now? A. A very sick person.

Q. Very sick? A. Very sick person.

Q. Miss Epstein, I will ask you if in the last few years it has been necessary for your brother to be hospitalized? A. Yes, sir, twice. In fact, he is only out of the hospital now a couple of weeks.

Q. Do you know what sort of treatment was given him at the hospital? A. Yes, he was given electrical shock treatment.

Q. He was given electrical shock treatment. You say he has only been out of the hospital about two weeks? A. Two or three weeks; I believe it is two weeks.

Q. Miss Epstein, while you were here in Memphis between about 1915 and 1916, did you work for anybody here? A. Well, yes, I worked for Judge Puryear, Mr. R. G. Brown, W. B. Rosenfield, for his office, Robert Acklen—

Q. Was it Abe Waldauer's office? (947.) A. Yes, Abe Waldauer's office. I worked for a short time for Robert Stickley and Norman Byers. And I worked for a short period for Mr. Lee Winchester. That was a short period of time. I had moved and gone to Chicago for a year, and when my brother died I came home, and before I became associated with the last organization I did temporary work, I worked for Rotary International—they were having a convention here, and Mr. Winchester.

Q. Miss Epstein, after your brother came back, did you continue to live with he and his wife? A. No, sir, I moved. The house was not big enough for all of us, and I went—after he came back—I moved when they first married, I went to a cousin, Mrs. Harry Dlugach and lived with her for a while. Then he went to the Army. I went back home to the family. Then when he came back, I moved out into a boarding house with a Mrs. Hendrix.

Q. Did you pay much for board in those days? A. Thirty dollars.

Q. A what? A. A month.

Q. That is room and board? A. Yes (948).

Q. Did it cost a lot of money to live in those days, Miss Epstein? A. No.

Mr. Will Gerber: You may take the witness (949).

* * *

LOU LOWRY,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you please state your name to the Court? A. Lou Lowry.

Q. Mr. Lowry, I will ask you whether or not you are a photographer here in the City of Memphis? A. Yes, sir.

Q. I want to ask you whether you had occasion to take a photograph of a safe in Mr. Epstein's loan office on Beale Street? A. Yes, sir (950).

Q. I want to show you a picture here and ask you whether that is a picture of the front of the safe.

(Photograph examined by counsel.)

Look at that picture. A. That is the front of the safe, sir.

Q. That is a picture of the front of that safe, is it? A. Yes, sir.

Mr. Will Gerber: If Your Honor please, I want to offer it in evidence and mark it as Exhibit "A" to the testimony of Lowry.

(Said photograph was accordingly marked as Exhibit 1 to the testimony of Mr. Lowry, and same will be found among the exhibits hereto.)

Q. I want to show you another photograph and ask you what that shows. A. That is a picture of the same safe with the doors on the outside opened up.

Mr. Will Gerber: I see. I want to offer that as Exhibit 2 to the testimony of Mr. Lowry.

(Said photograph was accordingly marked as Exhibit 2 to the testimony of Mr. Lowry, and same will be found (951) among the exhibits hereto.)

Q. I will show a photograph to you—I will show you another photograph and ask you to tell us what that photograph shows.

(Photograph examined by counsel.)

A. That is a picture of the same safe with the outside doors open and those inside doors open, and this—

Q. Is that a vault? A. That is a vault, I guess.

Q. A vault within a vault? A. I guess you would call it that.

Mr. Will Gerber: I see.

A. And this vault is closed up in this picture.

Mr. Will Gerber: I see. I want to offer that as Exhibit 3 to his testimony.

(Said photograph was accordingly marked as Exhibit 3 to the testimony of Mr. Lowry, and same will be found among the exhibits hereto.)

Q. I want to show you another photograph, and ask you to tell us what that shows. A. This photograph is similar to the one that you just showed me, with the exception that this door— (952)

Q. The vault is open? A. The vault is open.

Mr. Will Gerber I see. I want to offer that as an exhibit and mark it 4.

(Said photograph was accordingly marked as Exhibit 4 to the testimony of Mr. Lowry, and same will be found among the exhibits hereto.)

Mr. Will Gerber: I would like to have those passed to the jury for their examination.

(Said exhibits were accordingly passed to the jury for examination.)

Mr. Will Gerber: That is all (953.)

* * *

J. C. McDONALD,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury? A. J. C. McDonald.

Q. Mr. McDonald, how long have you lived in the City of Memphis? A. All my life.

Q. Do you hold any official position at this time with the City of Memphis? (954). A. Yes, sir.

Q. What is that position? A. Chief of Police.

Q. How long have you been the Chief of Police? A. Since September 1, 1954.

Q. Prior to that time, I will ask you if you were assistant Chief of Police? A. Yes, sir.

Q. Mr. McDonald, I will ask you whether you attended the school of the Federal Bureau of Investigation? A. I did.

Q. Whether you graduated from that school? A. Yes, sir.

Q. I want to ask you whether you know defendant in this case, William Epstein? A. Very well.

Q. I will ask you if at any time, particularly in 1947, what particular detail were you assigned to by the Memphis Police Department? A. Well, up until '47 I was on Beale Street from November, '43 until in December, '46, I was assigned to the pawn shop squad.

Q. Until December, 1946? A. Until December, 1946 (955).

Q. Did you see much or little money in that vault? A. Well, it was a lot of money. I don't know what denomination.

Q. How was the money, in stacks? A. Stacks.

Q. How was it— A. Stacks, straight up and down.

Q. Chief, I will ask you whether at any time you saw Mr. Epstein go in that safe and take any money out for the purpose of making loans? A. Many times.

Q. And if so, what denominations of money you seen come out of the safe? A. Well, the biggest I would see, if my memory is right, it was one hundred dollar bills on big loans. I have seen him make a lot of big loans there to people where he went to that safe, but I would say one hundred dollars was the biggest, any one denomination.

Q. Did he bring out any stack of hundred dollar bills, or just— A. It was stacks of money, now.

Mr. Will Gerber: I see.

A. I don't know if they were all hundreds or not.

Q. Mr. McDonald, I want to ask you whether (956) Mr. Epstein ever concealed the fact that he had this money in the safe? A. Not to me.

Q. During that period of time, did you have occasion to be in Mr. Epstein's place of business many or few times? A. Many times.

Q. I want to show you some photographs that have been introduced here as Exhibits 1, 2, 3 and 4 to the photographer, Mr. Lowry, and ask you whether you ever saw this safe in that establishment? A. Yes, sir. This is a safe that he had in the front part of the store.

Q. Mr. McDonald, during the period of time that you were down there, and particularly in 1946, I will ask you whether you had occasion to look into that safe while it was open? A. Yes, sir, that safe is located right in back of where the records were written up on the pawn shop, and on many occasions we would walk behind the counter to check the records. That was the system that we had been using ever since I had been down there. And many times we spent a lot of time in that pawn shop, because it was one of the biggest ones on Beale Street. And I (957) have seen money—money there quite often in the little safe part up there that Mr. Epstein, as far as I know, is the only one I had ever seen going there, but I had seen money in there. He had cashed my checks on several occasions when I was there.

Q. He would open it? A. Right there, public.

Q. And you have, Mr. McDonald, cashed your checks down there? A. Many a time.

Q. I want to ask you—you said something about going back or working in that part out there. I will ask you if there is not a regulation or ordinance of the City of Memphis that a pawn establishment has to keep a record of everything—they keep it showing everything that is pawned? A. There is.

Q. Was that record kept correctly? A. Yes, sir, as far as I know.

Q. Did you check from time to time? A. All day long.

Q. Sir? A. All day long.

Q. I will ask you if as part of the regulation he (958) was supposed to furnish the Police Department a copy of that sheet every twenty-four hours? A. That is right.

Q. Was that done? A. Yes, sir.

Q. I will ask you further; Chief, whether Mr. Epstein cooperated with the Police Department? A. One hundred per cent.

Q. Sir? A. One hundred per cent.

Q. Did you ever talk to him—did you ever talk to him about this large amount of cash that he carried in that vault? A. On several occasions I did. Right after I was detailed on Beale Street—of course, we were interested in the robberies or anything else that might occur, and I asked him then, I said, "Why don't you put that money in the bank?" And he made this statement that—he said, "The night watchman that watches my building—and I have also got a lot of confidence in the Police Department." And that was the last I heard of that.

Q. I see. I want to ask you, Chief, if you know what Mr. Epstein's health has been in recent years since about 1946? (959.) A. Yes, sir, I had occasion—I was on Beale Street when his daughter-in-law died—

Q. Did she commit suicide? A. Yes, sir.

* * *

A. (Continuing) And, in fact, I carried at that time—when we got the call I carried Mrs. Epstein out to the house. We didn't know what it was. And since that time, there is no doubt that he has taken it real hard.

* * *

A. (Continuing) He is not the same person.

Q. He is not the same person? A. No, sir.

Mr. Will Gerber: You may take the witness.

Cross Examination by Mr. Vaden.

Q. I would like to ask you a question or two, Chief. A. Yes, sir.

Q. Who was working on that beat with you in '43 to '46? (960.) A. I had several partners, Mr. Vaden.

Q. Was Dwyer one of them? A. He was there for a while, yes, sir.

Q. And as I understand it, several times a day you would go into this pawn place and check this record they kept? A. That is right; all of them.

Q. That was your duty? A. All the pawn shops.

Q. All the pawn shops. That was your duty? A. Yes, sir.

Q. What are they required to keep those records for? I just don't know too much about the pawn business. A. Well, if anything is stolen, of course we get a report of it, and we have a book there with the pawn shops that they would give it to us. We double check to see if anything is stolen.

* * *

A. (Continuing) They also get a list every day of the stuff that is stolen.

Q. So if they take some stolen merchandise in pawn and if they have it on the list, you would see it? A. We are supposed to, yes, sir (961).

* * *

Q. Now, Chief, I don't know; in this book do they put down how much money they loan on the article? A. Yes, sir.

Q. If it was a suit of clothes and they loaned ten dollars, they would put the name and address and ten dollars? A. They describe the clothing (962).

* * *

Q. And did you ever do any business with Mr. Epstein yourself? A. Sir?

Q. Did you ever do any business with Mr. Epstein yourself? A. No, sir, never.

Q. No real estate business of any kind? A. No, sir.

Q. You did not build any duplexes, did not do any duplex business with him, did you? A. No (963).

* * *

GEORGE A. LAWO.

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. State your name to the Court and jury. A. George A. Lawo.

Q. How long have you lived in Memphis, Mr. Lawo? A. All my life; forty-two years.

Q. Are you a member of the Police Department? A. Yes, sir.

Q. How long have you been on the Police Department? A. Eleven years.

Q. Sir? A. Eleven years.

Q. What position do you hold with the Police Department at this time? A. I am a captain in the robbery squad at the present.

Q. I will ask you what squad were you on in 1947? A. I was on the pawn shop squad.

Q. In 1947? A. Yes, sir (966).

Q. I will ask you, Mr. Lawo, if during that period of time you had occasion to go into Mr. Will Epstein's place? A. Many times.

Q. Many times? A. Yes, sir.

Q. Checked the records in there? A. Yes, sir, daily.

Q. Did you have any trouble with him of any kind? A. No, sir.

Q. Did he cooperate with the Police Department? A. One hundred per cent.

Q. Mr. Lawo, I will ask you if during 1947—I want to show you some photographs here that have been introduced as Exhibits 1, 2, 3 and 4 to Lowry, and ask you when you went into this place whether you saw this safe? A. Yes, sir, I did.

Q. I want to ask you whether you ever saw that safe opened? A. Yes, sir, quite a few times.

Q. I will ask you to state to the jury whether you have ever seen any money, currency, in the vault of that safe? (967.) A. Yes, sir.

Q. Many or few times? A. Yes, sir.

Q. How much money have you seen in that safe, Captain? A. I could not say what amount, Mr. Gerber.

Q. Not talking about the amount, but how much? A. In size?

* * *

A. Quite a bit.

Q. I will ask you from the standpoint of size of what you saw there—just the size—I know you can't tell how much was in there—

* * *

A. I have seen it full on several occasions.

Q. You have seen that safe full of money? (968.) A. The vault, that top vault, yes, sir.

Q. Have you seen this vault—you have seen the vault—

* * *

Q. The vault here that has been introduced as Exhibit 4 to Mr. Lowry, you say you have seen that vault full of money? A. Yes, sir. Now, let me clarify that question, please, sir.

Let me have that photo.

Looking in this vault from the front view, if there was a stack of money covering the front there, and none in the back, I couldn't testify to that. But, as far as I know, the vault was full of money. From what outward appearance at a glance at it, it was full of money.

* * *

Q. Mr. Lawo, I will ask you whether you have had (969) occasion to cash your pay check down there from time to time? A. Yes, sir; yes, sir.

Q. Did you ever borrow any money from Mr. Epstein? A. No, sir.

Q. Did you ever engage in any business with Mr. Epstein? A. No; no, sir.

Q. Mr. Lawo, in 1949, beginning about that time, did Mr. Epstein spend a great deal of time around that place? A. No, sir, I don't believe he spent as much time around there as he did in '48, no, sir (970).

* * *

Q. I want to ask you, Mr. Lawo, whether the sheets, the pawn sheets upon which records are supposed to be made on everything taken in pawn were always furnished the Police Department by Mr. Epstein? A. Yes, sir.

Q. Did he ever refuse to furnish one? A. No, sir, never.

Q. Did you ever find any merchandise at his place that had been taken in pawn that was not on the sheet? A. No, sir.

* * *

Cross Examination by Mr. Vaden.

Q. How long were you on the detail? A. From January, '47, until about September, 1953.

Q. Yes. Now, as I understand it, sometimes you would see that vault there full of money? A. Yes, sir.

Q. That is from outward appearance, at least? A. Yes, sir (971).

Q. Other times, of course, there wouldn't be so much in it, is that not true? A. Well, every time it was open I saw money. That is all I could say.

Q. But it was not full every time you saw it down there? A. Just about every time I saw it, it was full, yes, sir. I testified to that before.

Q. Just about every time? A. Yes, sir.

Q. You don't know what denomination it was? A. No, sir.

Q. Many people that would come in borrow five, ten, or fifteen dollars, don't they? A. Yes, sir.

Q. Small amount? A. Yes.

Q. And a man in that business would use a lot of fives and tens, necessarily, would he not? A. That is true, yes, sir (972).

* * *

S. NELSON CASTLE,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. State your name to the Court and jury. A. S. Nelson Castle.

Q. How long have you lived in Memphis, Mr. Castle? A. All my life.

Q. Where are you employed at this time? A. Union Planters National Bank, Manhattan Branch (973).

Q. How long have you been with the Union Planters Bank? A. Nearly forty years.

Q. What position do you hold with the bank at this time, Mr. Castle? A. Vice-president.

Q. Mr. Castle, do you know the defendant, William Epstein, in this case? A. Yes, sir.

Q. You have known him for how long? A. Over twenty-five years.

Q. Do you know or think you know his general reputation in this community among his friends, neighbors and acquaintances for the qualities of honesty and integrity? A. Yes, sir.

Q. Is that reputation good or bad? A. The only word I have ever heard about it, Will, is the best as to his integrity—

Q. Sir? A. (Continuing) —As to his integrity and morals . . e the only nature. I only know the best.

Q. Is it good or bad? A. Good (974).

Q. Mr. Castle, I want to ask you if in the regular conduct and operation of the bank whether there are not many customers who own stocks and bonds that borrow money from the bank for the purpose of making investments? A. Yes, sir (975).

* * *

ALBERT WOOLDRIDGE,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury? A. Albert Wooldridge.

Q. Mr. Wooldridge, how long have you lived in Memphis? A. Well, I have lived here over fifty years. I was not born in Memphis. I have lived here most of my life.

Q. Where were you born? A. Louisville; Louisville, Kentucky (976).

Q. You have lived in Memphis about fifty years? A. Over that. I hate to count back.

Q. Where are you connected at this time, Mr. Wooldridge? A. I am with the Manhattan Branch of Union Planters National Bank.

Q. What particular position do you hold with that bank? A. Vice-president and manager of the Manhattan.

Q. Vice-president and manager of the Manhattan Branch of Union Planters? A. Yes; sir.

Q. How long have you been with Union Planters Bank, Mr. Wooldridge? A. Since 1923.

Q. How long have you known the defendant in this case, William Epstein? A. Well, I have known him probably thirty-five years or more.

Q. Do you know or think you know his general reputation in this community among his friends, neighbors and acquaintances for the qualities of honesty and integrity? A. I think I do.

Q. Is it good or bad? (977.) A. It is good.

Q. I want to ask you, Mr. Wooldridge, if in the course of your banking business, whether Mr. Epstein dealt with you on many occasions? A. Yes, sir, he did. I handled his account for a good many years.

Q. I will ask you if he furnished financial statements to the bank from time to time? A. He did.

Q. I will ask you if he furnished those of his own volition or whether it is a requirement of the bank that financial statements be filed? A. Well, in his case I would not say it was a requirement because he borrowed on collateral generally, and while it is customary to get statements from merchants and people in business, why—

Q. You say in his case it was not? A. I don't think it was compulsory, no.

Q. It was not compulsory. Mr. Wooldridge, I will ask you if at times you have had any conferences with Mr. Epstein as to whether or not Mr. Epstein included in those financial statements all of his assets? A. Well, he has told me at different times the statements did not include all his assets (978).

Q. Said he did not include all his assets? A. Yes.

Q. Told you that as vice-president of the bank? A. Yes, sir.

Q. Did he ever defraud the bank in any way, Mr. Wooldridge? A. No, he did not.

Q. Did not. Mr. Wooldridge, I want to ask you if in the course of banking business there are many people who have large savings accounts and who own stocks and bonds that borrow money from the bank for the purpose of making investments? A. Oh, yes, quite a few of them, yes (979).

* * *

Q. Adequate. You say that Mr. Epstein told you that his statement in his financial statements that he furnished the bank, on which loans are made, that he has not included his assets as set out in the statement? A. I said that he told me that he had other assets that he had not included in the statement (980).

* * *

Re-Direct Examination by Mr. Will Gerber.

Q. I will ask you if in making loans at the bank Mr. Epstein always had gilt-edged collateral? A. Yes, sir, he did.

Q. He had as much as forty-five thousand dollars in Treasury bonds? A. He had Treasury bonds and had cash value of life insurance.

Q. About how much was the cash surrender value of the life insurance, at least? A. It is about—right now it is between eighteen and twenty thousand or so.

Q. Did he ever make any loan in excess of the gilt-edged security he had down there, Mr. Wooldridge? A. Personally, I don't think he ever did, no, sir.

Q. I see. Mr. Wooldridge, I want to ask you this (983) question. Sitting here on my right is Mr. Hubert Norris. Did he ever talk to you about Mr. Epstein's financial statements? A. I don't recall whether he did or not. There were a number of these Internal Revenue men in the bank, and—

Q. Did they ever talk to you about anything in connection with any financial statements? A. No, they asked us for records, which we supplied.

Q. You furnished them all the records they wanted? A. All of our records were available to them, yes (984).

* * *

JULIUS LEWIS,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. You are Mr. Julius Lewis? A. That is right.

Q. Mr. Lewis, how long have you lived in the City of Memphis? A. I have been here all my life.

* * *

Q. You have a store on Main Street and have a store on Union Avenue, is that right? A. That is right (985).

* * *

Q. Mr. Lewis, how long have you known the defendant in this case, William Epstein? A. Oh, back about 1910 or 1911, when he first came up to Memphis (986).

* * *

A. Quite often.

Q. After he came here, did he work for any pawnbroking establishments on Beale Street? A. I think he went to work for Morris Lippman.

Q. Mr. Lewis, I will ask you if you remember when he went into the Army? A. Yes.

Q. During— A. World War One.

Q. Sir? A. World War One.

Q. Did you have occasion to see him and talk to him after he came out of the Army? A. He came in to see me when he got out of the Army. He had a citation from President Wilson for bravery—

Q. Did he tell you about any money he brought back with him from the Army? A. Well, I got to talking to him about how he did over there, and he said he had a little luck, he won a little money over there.

Q. I see. Mr. Lewis, I want to ask you if at any time he talked with you about going into business with a man by the name of Nathan Karnowsky who had a loan business? (987.) A. That is right, he did.

Q. Did he tell you at that time how much money it required for him to go into that business? A. Well, he said he could buy a half interest for ten thousand dollars.

Q. I see. What was the name of Mr. Karnowsky's business? A. Commercial Loan Office.

Q. Commercial Loan Office. I ask you if that was about the early twenties? A. Oh, I think it was.

Q. Did you advise him to go into that business with Mr. Karnowsky? A. I told him that I did not think he would get along with Mr. Karnowsky, that I advised him not to go into that business with him.

Q. With Mr. Karnowsky? A. That is right.

Q. How long did he stay in that business with Mr. Karnowsky? A. I guess two or three years.

Q. I see. And I ask you if after that time he went in business for himself? A. That is right (988).

Q. And he has been in business down there ever since? A. That is right.

* * *

Q. I want to ask you, Mr. Lewis, if during the depression years you had occasion at any time to borrow any money from Mr. Epstein? A. Yes, I have borrowed two or three thousand dollars from him several times.

Q. Cash money? A. Yes, sir.

Q. During the depression? A. Well, that was the days when we were cashing checks for the veterans, veterans' checks.

* * *

A. (Continuing) —Send down there and he would let me have two or three thousand dollars any time I would call him.

Q. I see. Mr. Lewis, did you pay him any interest on that money? A. No, sir.

Q. I want to ask you, Mr. Lewis, if you have occasion (989) to talk—or had occasion to talk to Mr. Epstein during the years '49, '50, '51 and '52 as to whether or not business in those years was good or bad as compared to prior years? A. Well, I talk to him quite often. One day I went down to solicit—

* * *

Q. Go ahead, Mr. Lewis. A. On one occasion I went down to solicit Mr. Epstein (990) for the United Jewish Appeal, and he complained bitterly about business.

Q. Complained bitterly about business at that time? A. That is right.

Q. Mr. Lewis, I want to ask you this question. You are a business man. You say you have been in business on Main Street and Union Avenue since you were sixteen years old. I want to ask you whether in 1949, '50, '51 and '52, overhead and operating a business—that is, salaries and expenses of operating a store, were more or less then than they were in prior years? A. Well, after World War Two our operating expenses skyrocketed.

Q. Skyrocketed? A. That is right.

Q. And they were much larger in 1949, '50, '51 and '52 than they were in prior years? A. That is right.

Q. Mr. Lewis, do you know or do you think you know the general reputation of Mr. William Epstein in

this community, among his friends, neighbors and acquaintances, for the qualities of honesty and integrity? A. Well, I have always known him to be the highest type man (991).

Q. Sir? A. I have always known him to be a man of integrity and a high type man.

* * *

Cross Examination by Mr. Fitzhugh (992).

* * *

MAYNARD EPSTEIN,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury? A. Maynard Epstein (993).

* * *

Q. Mr. Epstein, how old are you? A. I am thirty-four years old.

Q. Are you married? A. Yes, sir.

Q. How long have you been married? A. I have been married fourteen years.

Q. Do you have any children? A. Two children.

Q. I will ask you, Mr. Epstein, if during World War Two you had occasion to serve in that conflict? A. Yes, sir.

Q. Where did you serve? A. In the Pacific theater.

Q. How long were you overseas? A. I was overseas between twenty-seven and twenty-eight months, all the way from New Guinea to Tokyo.

Q. Mr. Epstein, when you came out of the service, did you go into any kind of business? A. Yes, sir.

Q. Who with? A. I went in business with my father-in-law in the auto parts business (994).

Q. Sir? A. I went in business with my father-in-law in the auto parts business.

Q. What happened to your father-in-law? A. He was killed.

Mr. Will Gerber: I see.

A. By an automobile accident.

Q. Sir? A. In an automobile accident.

Q. In an automobile accident. After your father-in-law was killed, I will ask you whether or not you went down and went to work for the defendant in this case, William Epstein? A. I went down there just before he was killed.

Q. I see. Did you talk with Mr. Epstein about any connection with him? A. Yes, sir. In the latter part of '49, Mr. Epstein sent for me and offered me a proposition that if I would go to work for him and work a year and liked the business, and the business—I found out I could handle the business and do it, that he would sell me half interest in the business. And he told me at that time that he had been in ill health, which I already knew from the family, and that he wanted to make some investments and retire, (995) and get some investments for his own income and retire from the store, and eventually I would run the whole store.

Q. Mr. Epstein, did you go to work? A. Yes, sir.

Q. When did you go to work? A. In January of 1950.

Q. You went to work in January of 1950? A. Yes, sir.

Q. I ask you if he told you that if you liked the business he would sell you an interest in the business? A. Yes, sir.

Q. At the end of '50, did you find that the business had been of such quality that you wanted to buy an interest in the business? A. No, sir, the end of '50 I told Mr. Epstein that I was not satisfied with the business, I did not think it was very profitable, and I was not interested in buying a third of any share of it at that time. He offered me a third interest, and I did not—

Q. Did you stay there in '51? A. Yes, sir. He offered me another proposition then. He told me if I would stay he would pay me one hundred dollars a week, and I would have another year to make (996) up my mind if I wanted to go in the business.

Q. Did you stay there that year? A. Yes, sir.

Q. At the end of that year, I will ask you whether business was any better than it was the prior year of '50? A. It was no better at all.

Q. Did you at the end of '51 buy a partnership interest in the business? A. Yes.

Q. Why? Tell us why? A. Well, I had more experience in the business. I felt like I could do it, run it, then. I felt like the merchandise we had all this time was on a high market, and as we were replacing it with newer loans the loans were getting cheaper, so eventually, when that merchandise got on sale, there would be a chance to make a profit instead of a loss, like we were doing on nearly—well, very many sales. We had a number of suits that twenty, twenty-five, or thirty dollars was loaned on that we were selling for fifteen, or ten or twelve, and prices like that. And whereas, as we were replacing these things we were getting suits on a lower market. And so eventually, when those suits go on sale, that we would be able—(997) would be making profits on them. And I thought that eventually it would work out and I would be able to show some kind of profit or gain.

Q. Did you buy an interest in that business beginning January 1, '52? A. Yes, sir.

Q. Did you enter into a contract with Mr. Epstein? A. Yes, sir.

Q. Was that contract drafted by any law firm in Memphis? A. Yes, sir, Mr. Waldauer and Mr. Ben Adams drew it.

Q. Do you have a copy of that contract? A. I have it right here, sir.

Q. I would like for you to produce it (998).

* * *

(Document examined by counsel.)

Q. Mr. Epstein, how much did you pay Mr. William Epstein for the third interest? A. I paid him one-third of the inventory.

Q. You paid him one-third of the inventory? A. Yes, sir.

Q. How much did you pay him in cash? A. I paid him twelve fifty in cash—twelve hundred and fifty in cash, and check of eighty-seven fifty—eight thousand seven hundred and fifty dollars. I gave him ten thousand dollars down and the balance on a note, personal note.

Q. Mr. Epstein, do you have a receipt and check for that ten thousand dollars? A. Yes.

Q. I wish you would present them to me, please, sir.

(Documents examined by counsel.)

All right, now, you have shown us a receipt dated the first—looks like first and twelfth, '52, received from Maynard Epstein, twelve hundred fifty dollars, signed by William Epstein, and you have presented us with a check dated January 12th, '52, made payable to William Epstein for eighty-seven dollars and fifty cents? (999.) A. Eighty-seven hundred and fifty.

Q. Is that eighty-seven hundred fifty dollars? What did I say? A. Eighty-seven dollars and fifty cents.

Mr. Will Gerber: Well, I am sorry about that. If Your Honor please, I want to have these marked as Exhibit 1 and Exhibit 2 to the testimony of the witness, and pass them to the jury for their inspection.

(Said check was accordingly marked as Exhibit 1 to the testimony of Mr. Maynard Epstein, and same will be found among the exhibits hereto.)

(Said receipt was accordingly marked as Exhibit 2 to the testimony of Mr. Maynard Epstein, and same will be found among the exhibits hereto.)

Mr. Will Gerber: I also want to offer in evidence this contract between William and Maynard Epstein, dated the first day of January, '52, and have that marked as Exhibit 3 to his testimony.

(Said copy of contract was accordingly marked as Exhibit 3 to the testimony of (1000) Mr. Maynard Epstein, and same will be found among the exhibits hereto.)

Mr. Will Gerber: And pass them all to the jury.

(Said exhibits were accordingly passed to the jury for examination.)

* * *

Q. Now, Mr. Epstein, you say that you also executed a note? A. Yes, sir.

Q. On January 1, 1952, $31,666.66.

I want to show you this note, and ask you if this is the note that you executed at that time? (1001) A. Yes. sir.

Mr. Will Gerber: If Your Honor please, I want to offer that in evidence and mark it as Exhibit 4, I believe, to the testimony of the witness.

(Said note was accordingly marked as Exhibit 4 to the testimony of Mr. Maynard Epstein, and same will be found among the exhibits hereto.)

Q. Were you able to make any payments on that note in 1952? A. No, sir.

Q. In '53? A. No, sir.

Q. In '54? A. Yes.

Q. I notice you have payment January 2, '55, $666.66, and January 5, '56, $7,000.00, is that right? A. Yes, sir (1002).

* * * *

Q. Mr. Epstein, how much did you draw out of that business in 1952? Have you got the income tax return? A. Yes.

Q. Did you report that in the return? A. Yes. From the return, I drew $5,328.17.

Q. Sir? A. From the return, I drew $5,328.17.

Q. Will you show us the return, please, sir, copy of your return, your personal return for '52? A. All right.

* * * *

Q. Now, Mr. Epstein, it has been testified to in here, and the income tax return of Mr. William Epstein for 1952 shows the same amount as having been reported as his income out of that particular business (1003).

Now, you have testified to the jury that you bought a one-third interest; and if Mr. Epstein got five thousand some-odd dollars and you got five thousand some-odd dollars, that would be fifty-fifty. Why were you paid that way in '52? A. In the agreement, we agreed that the first

thirteen thousand dollars profit is to be split fifty-fifty, and above, if we ever got above that, it would be split one-third and two-thirds.

* * *

Q. Just, in other words, the contract itself provides that the first thirteen thousand dollars would be split fifty-fifty? A. That is right.

Q. And over thirteen thousand dollars, he would get two-thirds and you would get one-third? A. Yes.

Q. Mr. Epstein, was business good or bad in '50, '51 and 1952 down there? A. It was not good at all.

Q. It was not good at all? A. No, sir (1004).

Q. I want to ask you if in the course of this investigation you had occasion to be called to Mr. Norris' office? A. I was.

Q. Did you go up there? A. Yes, sir.

Q. Did you answer questions? A. I answered all the questions he asked.

Q. I want to ask you if you were there while Mr. Huddleston was working? A. The entire time.

Q. Did Mr. Huddleston ever have any conferences with you down there? A. We talked.

Q. When he called for records, did you furnish them? A. Everything he asked for, he was furnished.

Q. Everything he asked for, he was furnished? A. Everything, every book.

Q. Did either he or Mr. Norris, whether in Mr. Norris' office or whether Mr. Norris came there, or Mr. Huddleston, ever ask you for the Epstein books behind 1948? A. No, sir.

Q. I will ask you if the Kirschner books were (1005) available from '37 to '49? A. All these books were two feet away from where Mr. Huddleston was working. They were also in the office.

Q. They were how far away from him? A. Not two feet. We have a little office, just enough for a desk, and the books were back there, and he worked on that desk.

Q. Did Mr. Huddleston ever work on the Kirschner books? A. Not to my knowledge.

Q. Did Mr. Norris ever ask for the Kirschner books? A. Not to my knowledge.

Q. Did Mr. Norris ever ask you to produce for his inspection any inventory books? A. No, he asked me did I have them, and I told him we did have them. He never asked for them.

Q. He never asked for them? A. No, sir.

Q. Mr. Epstein, I will ask you if at my request—there has been introduced in evidence here a safe and vault of the safe down there in your establishment? A. Yes, sir.

Q. I will ask you if at my request you measured (1006) this vault? A. Yes.

Q. Can you tell us what this vault measured, please, sir? A. Yes, sir. These are inside measurements. It is twenty-one and one-half inches wide, ten and a half inches high, and twelve and a half inches deep.

Q. Mr. Epstein, I will ask you if at my further request you tried to determine how many bills would go into that vault? A. Yes, sir.

Q. How many? A. Well, you can put eight stacks across, two stacks deep. So you can put sixteen stacks of bills in this vault. And each stack will hold twelve hundred bills high. And so that will make a total of better than nineteen thousand bills can be put in there without cramming.

Q. Mr. Epstein, I will ask you if you have had occasions to look into that vault? A. Many occasions.

Q. I will ask you if you have had occasion to see Mr. Epstein take money out of that vault? A. Many times (1007).

Q. What denomination bills did he have in that safe? A. Tens, twenty, fifty, and one hundreds. He didn't have any ones. I never saw one come out of there, anything less than a ten.

Q. I see. I will ask you, Mr. Epstein, if Mr. Epstein cashed many checks—? A. He cashed—

Q. (Continuing) From the funds in that vault? A. He cashed a great deal of checks. People would come

down that weren't spending money with us and ask for a payroll check to be cashed—he gets it out of this money. Maybe the store surplus would be low; maybe we would have a few checks on hand, and he would cash them for the store.

Q. Mr. Epstein, I will ask you if it was customary for the store to cash many checks, checks where people never even made a purchase at the store? A. Yes.

Q. Did he cash many of those checks? A. Yes, he had colored people come and he cashed checks with them Friday and evenings, just payroll checks for convenience.

Q. I want to ask you there if after you went there (1008) the funds of the store were kept commingled with any of Mr. Epstein's funds? A. No.

Q. I want to ask you if at any time the store's funds were ever put into that vault we are talking about? A. No, sir.

* * *

Cross Examination by Mr. Vaden (1009).

* * *

ABE D. WALDAUER,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury? A. Abe D. Waldauer.

Q. Mr. Waldauer, you have been a practicing attorney at this Bar for how long? A. Since 1916.

Q. Do you know the defendant in this case, William Epstein? A. I do.

Q. I will ask you if on or about January 1st, 1952, your law firm drew the contract, partnership agreement, between Mr. William Epstein and Mr. Maynard Epstein? I want to show you the contract. A. This is copy of contract that was drafted in my office.

Q. I see. Mr. Waldauer, the contract—

If Your Honor please, for the benefit of the record, let me see it just a minute—Exhibit 3 to Maynard Epstein, Exhibit 3 to the testimony of Maynard (1024) Epstein:

How long have you known Will Epstein? A. Since 1919.

Q. I want to ask you whether you know or think you know his general reputation in this community among his friends, neighbors and acquaintances? A. I do.

Q. —For the qualities of honesty and integrity? A. I do.

Q. Is that reputation good or bad? A. Good (1025).

* * *

NATHAN EPSTEIN,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Will Gerber.

Q. Will you state your name to the Court and jury? A. Nathan Epstein.

Q. You are the son of the defendant in this case, Mr. William Epstein? A. Yes, sir.

Q. I want to ask you, Mr. Epstein, if you recall who your father's lawyer was in 1937? A. Yes, sir, a gentleman by the name of Mr. Leo Goodman.

Q. I want to ask you if you recall back in 1937 when there was an act passed which required the separation of a sales store from a pawn establishment? A. Yes, sir, I do.

Q. I will ask you if you were present at any time (1026) after the passage of that act when Mr. Goodman was in your father's place talking to him about the passage of that act and things that should be done as a result of it? A. Yes, sir, I was.

Q. Will you tell us what Mr. Goodman told your father at that time about this? A. Yes, sir, he advised my father to seal the opening that connected the two stores, and advised him to place the sales store in the name of a trusted relative, and to keep it—make two

separate establishments, and he also advised him to keep separate books, separate records, and file all separate tax returns on that basis (1027).

* * *

RICHARD DEUTSCH,

the next witness, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bernstein.

Q. Would you please state to the Court and jury your name, and spell it? A. Richard D-e-u-t-s-c-h.

Q. Please state your occupation, Mr. Deutsch? A. Professor of Business Administration, Christian Brothers College, Memphis, Tennessee.

Q. Professor, would you state to the jury your educational background? A. I was a grown man when I came to this country, so almost all my education was in Europe. I attended schools, University of Vienna, Master's degree Business Administration 1921, Doctor of Economics 1932 and '33, and I came to this country I think in '38, and passed (1029) the CPA examination I think it was '42, and I am a certified public accountant in the State of Arkansas and Tennessee.

Q. Professor, do you not teach economics and business administration on the college level? A. Yes.

Q. In addition to teaching, do you also do public accounting? A. Well, from the day I passed the CPA examination, almost all—I was in public accounting work until—until then September, 1955, when I was appointed full professor at Christian Brothers College, and I do still accounting and part-time work with Homer K. Jones, with whom I was connected since after I left the Federal service. It was July—July 17, 1947, I started with Homer K. Jones.

Q. Did you say you were in the Government service? A. Yes, I was an Internal Revenue Agent from I think October, 1944, until July, 1947.

Q. Approximately how many cases did you handle while you were an Internal Revenue Agent? A. Well, about five hundred case years.

Q. What type cases did you handle? A. Well, individuals, partnerships, corporations (1030), and might have been a few fiduciaries among them.

Q. Did you handle any fraud cases personally? A. Well, I got up to—they were civil cases, though, most of them.

Q. Did you ever use the net worth method in any of those cases? A. No.

* * *

Q. Are you a full member of the American Institute of Accountants? A. Yes, sir.

Q. Professor, have you written any publications, any articles that were published? A. Well, in a few occasions, and—

Q. I have here in Taxes magazine, February, 1949, an article entitled "A Historical Analysis of (1031) Section 722, (b) (2)", by Richard Deutsch. Was this article ever cited in Merton's, a leading—? A. Yes, Merton's picked it up.

Q. Merton's is a leading authority on tax subjects, isn't it? A. Yes.

* * *

Q. When did you first meet Mr. Epstein? A. It may have been in March, late in March or early April, 1953.

Q. And what was the occasion of that meeting? A. Mr. Summers—I think he testified that he made the returns for Mr. Epstein at the time, called me down there. He said he had a technical problem he wanted to (1032) have my help on, and I gave it to him.

Q. What was the tax effect of your recommendations to Mr. Epstein? A. Well, the return he had at that time had already been prepared by Mr. Summers, and some item—I don't exactly know what it was—something to do I think with capital gains, and my recommendation resulted in additional tax.

Q. Did Mr. Epstein object in any way to the increase in tax? A. No, there was no discussion with it at all. I remember only that he said, "well, if I have to pay it, I pay it."

I also recommended at that time that the 1951 return be amended accordingly. I think it was that his coupons on this Government bonds which Mr. Summers had at that time dug up, and the amended '51 was filed.

Q. When was the next time you had any dealings with Mr. Epstein? A. It was November, 1954. I think in 1954.

Q. What caused you to have any dealings with him at that time, Professor? A. Well, Mr. Jones had ordered me to go down to Mr. Epstein and prepare a net worth statement for the (1033) years 1948 through 1952. He told me at that time that there had been a hearing or conference in Mr. Norris' office where he was present, and the Government is investigating those years, and that on the net worth basis—

Q. What did you do—? Excuse me. A. (Continuing) —On net worth basis.

Q. What did you do to begin the investigation? A. Well, the first thing I asked—when you are an accountant you ask for the files, which I did. And if I remember right, we dug up some files for the years concerned and studied the files and returns. And then I went down to see Mr. Epstein.

Q. Did you ask him at that time for his records? A. Yes, more than that. One of the first things I told him—"Now, Mr. Epstein, I take this case, do the work on it, but I put you on notice I want to do the work as I would have done when I would still have been a Revenue Agent, and I expect your cooperation."

Q. Did Mr. Epstein cooperate with you? A. He promised it, and he did, yes. In fact, I think sometimes he desperately tried to find the things I wanted—dig them up.

Q. Did you ask Mr. Epstein about his cash at that time? (1034) A. Well, Mr. Jones had instructed me that in that hearing Mr. Epstein had mentioned something about the Kirschner cash of eighty-two thousand five hundred dollars which he had on hand on January 1, '48. And of course when I was down there and got my bearings, asked him about that, and he said, "Yes, this is true,

I had that money on hand." I asked him, "Untouched?" He said, "Yes." I said, "Was it all, or did you have any money of your own, too?" He said, "Yes." I said, "You must have had a considerable amount of money on hand, then?" And he said, "Yes, sir, I did."

Q. Did you ask him about any steps he had taken to prevent burglary, or about insurance he might have carried? A. Of course, of course, because such a big amount of money in the vault, I got interested.

"Look at the records; can you tell me a specific day of what you had on hand?" He said, "no, no, I did not keep day to day records, no."

I said, "All right, have you the insurance on it?" He said, "I tried to, I couldn't get it."

Q. Did you inspect and analyze all of his bank accounts, along with the bank account of the J. P. Kirschner Store and Mrs. Epstein's bank account? (1035.) A. Well, for all these years was quite a bit of work, and Mr. Summers helped me on it, but I did some of the work myself.

Q. Did you inspect his books? A. Yes, sir.

Q. About how much time would you say you spent inspecting his books, Mr. Deutsch? A. Oh, I was days on the stuff.

Q. As a result of your investigation, did it become clear to you that there was a considerable increase in net worth from year to year? A. Well, it was apparent.

Q. Did you discuss these increases with Mr. Epstein? A. Yes.

Q. What did he tell you about these increases? A. The cash he had on hand was—explained his difference.

Q. Did you ask him about the details of his money, where he kept it and how he used it? A. Yes. It was of course very important.

Q. Did you find as a result of your own individual investigation that Mr. Epstein actually used the cash like he said he used it? A. I saw that he used cash to considerable amount—(1036) and cash, not in checks.

Q. Did you find him evasive at any time about it? A. No, not at all. He was—at times be uncertain about

things, and then he would tell me the names of people who would know more about it.

Q. Did you go to see Mr. Wooldridge at the Manhattan Bank? A. Yes, several times.

Q. Did you discuss with him about the financial statements which Mr. Epstein gave? A. I asked him about it, too.

Q. Did you go to see other people in connection with this? A. Oh, I tried to, of course, whenever Mr. Epstein told me something or gave me information, I tried to verify as much as I could. I contacted all the accountants he had that kept records for him or furnished him his figures. I think some of them testified here.

Q. After you prepared your net worth statement, Professor Deutsch, did you have occasion to compare that statement with Mr. Norris' calculations? A. Well, we were pretty much pressed for time. The filing period was coming up. But I think it was in the middle of March, 1955, that Mr. Norris—he must have (1037) talked to Mr. Jones, because I don't know, but a meeting was arranged and held, and Mr. Jones told me to get the papers and come down with him to compare the figures with Mr. Norris.

Q. Now, I ask you, did Mr. Norris give you his net worth calculations? Did he hand them to you? A. No, the meeting was on that basis that Mr. Norris held before him a very large sheet with his information, and I had before me the figures I had computed, and we called them out to each other, and occasionally we would discuss a matter.

Q. You never did see his net worth figures? A. No, I never did see his work papers.

Q. Did he see yours? A. He did not ask for them.

Q. At that meeting, did Mr. Norris have some items which were omitted from his net worth calculations which were to his disadvantage furnished him by you? A. Yes, I had some of his items and turned them over to Mr. Norris. It was, for instance, the bank reconciliation, I remember that.

Q. After this meeting with Mr. Norris—you did not tell me when that was; when was that meeting, do you have any idea? (1038.) A. March, '55.

Q. March of 1955? A. Yes.

Q. After that meeting with Mr. Norris, Mr. Deutsch, when was the next time you saw anything or heard anything about what the Government's actual net worth calculations were? A. Mr. Bernstein, there was no next time. I did not see any at this time. The figures were called out to each other.

* * *

A. (Continuing) —And then I saw the net worth statement which the Government has introduced here.

Q. In other words, the next time you saw or heard anything about what the Government's net worth calculations were was right here in this courtroom? A. About the details, yes.

Q. You were never advised what the Government was actually charging Mr. Epstein with? A. I never saw that statement before.

Q. Did you have any accurate idea of what your differences might be as to the Government's differences until you saw that statement? A. Accurate—no (1039).

Q. Did you ever refuse to cooperate with Mr. Norris in furnishing him any information? A. It would have been impossible for me; I hold a Treasury card; I would never do it.

Q. Professor, you have heard people in this courtroom testify as to the adequacy of these books. I ask you as a CPA, as a college professor, as an ex-Internal Revenue Agent, whether or not these books are adequate under the Internal Revenue regulations? A. If they are properly kept, they are absolutely adequate. In fact, I was a Revenue Agent in Arkansas. Many a time I would have been happy to have a set of books like this to check on (1040).

* * *

Q. I will repeat the question, Professor Deutsch. What did Mr. Epstein say when you asked him why he

showed the amount of cash that he did show on the financial statements to the bank? A. He said he had included only his cash; he did not include the Kirschner cash because he felt he had no authority to do that, and he did not include another considerable amount which he claimed belonged to his wife.

Q. Now, Professor, you said you approached this as an Internal Revenue Agent would. Did you attempt to prove how much cash Mrs. Epstein had and how much cash was the Kirschner cash? A. Well, when Mr. Epstein brought this explanation up as his wife's cash, I said, "All right; well, then, we will have to show that." So he said, "Why, that is not too difficult. It was put in investments during these years, and—"

Q. Let me ask this, now. A. Yes.

Q. Are you telling me that her cash was invested? A. Yes.

Q. Is that correct? (1046). A. Yes, what Mr. Epstein told me at that time.

Q. Was invested in her name? A. Part of it was in her name directly, and part of it was in jointly owned property.

Q. Now, was this in the period '49 to '52? A. 1952, yes; after January 1, 1948, when he said he had that much.

Q. It was between '49 and '52? A. Yes.

Q. And that was before any Internal Revenue investigation began, is that correct? A. Well, I don't know exactly when it began, but it seems that it hadn't started in '52.

Q. Professor, have you analyzed those investments in years? Can you show us specific pieces of property? A. Suppose I try.

Now, Mrs. Pearl Epstein, it has been testified to, owned the residence at 661 East Drive.

Q. And how much was invested? A. In this at various times after January 1, 1948, was put $28,236.61 of cash I could find. I don't know if that is all or not, but that is all I found.

And then on July 11, '52, they bought a duplex at 746-48 Montgomery. I don't know whether they bought

(1047) it or built it, but it seems it was built and bought—$13,565.92.

Q. This property was in— A. In her name.

Q. (Continuing) —Mrs. Epstein's name? A. In her name.

Q. Go ahead. A. This is $41,802.53. Then the couple, William and Pearl Epstein, owned jointly 231-237 Silverage.

Q. When was that purchased, Mr. Deutsch? A. That date it was bought, 2—February 2, 1952. My notation says $12,975.96.

On the same date, 183-185 Silverage, $6,583.21.

A few days—no, on August 2, 1951, they bought 1638 Union that has been mentioned here—$27,286.08. Well, there was a mortgage on it, $9,006.79. That leaves net purchase price of $18,279.29.

October 19, 1951, there was bought in their joint name Barton—the Barton property, I don't have no nearer description on this—cost $5,981.23.

All the joint properties I have just mentioned amount to $43,819.69.

On half of this—

Q. In other words, you are taking one-half the cost? (1048). A. The one-half of this I gave credit to her is $21,909.84.

That amounts to total of $63,712.37. This is not quite the amount—yes, it is not quite the amount he claimed that Mrs. Epstein had January 1, '48. It is a little bit less.

Q. As you understand it, what did Mr. Epstein tell you, or how much did he tell you she had on that date? A. On that day—on January 1, '48?

Mr. Bernstein: On January 1, '48.

Q. You know, on my work on this covered actually all of the year '48. He claimed that $63,760.00 were his wife's.

Q. Well, how much was shown invested in property after '48 and before the end of '52? A. $63,712.37.

Mr. Bernstein: Thank you.

A. (Continuing)—According to this computation.

Q. Now, would you tell me and the Court and the jury how you determined a proof of the amount of money from the Kirschner operation? A. Of course, I had to find out if it were possible the eighty-two thousand were here; so I took all the Kirschner returns and added the reported economic income (1049) up, and deducted from that the tax that was paid on this income. This was income of course under the assumption, as Mr. Epstein stated to me, that none of the money was ever used, and that left eighty some thousand dollars net.

Mr. Bernstein: Thank you.

A. (Continuing) —It was not ninety, it was less.

Q. Did you establish or prove Mr. Epstein's earnings in prior years—that is before 1949? A. Yes, I did that, because I was asked to do that when we had to—efforts were made to prove that he could ever have earned that much. So, of course, much was his information, but that part of it I could do. I traced his income tax returns back, Mr. Bernstein. In our office we had the files as far back as '41, as I remember, and then I made Mr. Epstein dig up out of old files the other returns.

Q. How far back did he have them? A. He found them as far back as '37. I wish it would have been further, but '37, that was all on file.

And, using these returns, and using of course the returns Mrs. Epstein had filed on down to the year 1947, it was of course possible from the returns to cover the period from '37 to '47 (1050).

Q. Now, then, what did you do about the years where you had no returns? A. Well, there was the Collector's certificate issued on Mr. Epstein's prior tax payments. I think was even pertained—obtained or furnished directly from the Government, and I was handed a copy of these certificates of Mr. and Mrs. Epstein, and from them I reconstructed the income. Mr. Norris and I got together, I think even during the trial, and figured some of the years out. In most instances we arrived at the same figure.

Q. What did you do, Mr. Deutsch, about the years where you could find no tax payments certified on the—?

A. Well, I did—as Mr. Norris said he did, I used the maximum exemption for that year. I felt authorized to do that because Mr. Epstein in another connection, or in that connection, told me when I asked about his past business experience, that he never had any losses, not even during the depression.

Q. Mr. Deutsch, is it true that all the calculation underlying your own computations, as well as the computations of the Government that led to the indictment in this case, are based upon the theory known as the net worth theory? A. Yes (1051).

Q. In your opinion, as an expert accountant, is the net worth theory an accurate method of determining income? A. No.

* * *

Q. In your opinion, as an expert accountant, do you believe that the net worth method is an accurate method of determining—? (1052.) A. It is not an accurate method—

* * *

Mr. Bernstein: If Your Honor please, I would like to hold the chart over here, if you will let me do it.

(Said chart was accordingly marked as Exhibit 1 to the testimony of Mr. Deutsch, and same will be found among the exhibits hereto,)

Mr. Bernstein: Your Honor, would it be (1053) all right to pass these to the jury?

* * *

Q. Professor Deutsch, is this a chart of net worth you prepared? A. Yes, it was prepared in the last two days, after we got the Government's net worth statement.

Q. Now, Mr. Deutsch, would you show the Court and the jury, beginning with the amount of cash which Mr. Epstein said he had on January 1, '48, how this cash ties in to his net worth increase? A. Well, this net worth statement here—I have to apologize to the jury, it was kind of hastily drawn and not too well reproduced; and in addition, this two—there are two minor typographical errors—

(1054) here is one, two dollars the year '50, one five dollars the year '52, but these totals balance out. The error was made in this fifteen hundred sixty dollars that was reflected in the total.

Now, this net worth statement is prepared similar to the one which Homer K. Jones and Company had submitted in behalf of Mr. Epstein around June—I think it was June, in Nashville at the conference before Mr. Wallwork, and this is prepared based on Mr. Epstein's affidavit under the assumption that he had this one hundred sixty-eight thousand dollars on August 1st, 1948. '48 is not shown here, but some of this money, as the Government knows—from the statement we have handed in—it was left—

* * *

Now, I assume first that cash on hand of which Mr. Epstein claimed was his own, and here we accept the Government's figures. Mr. Norris testified that we did not object to that particular item. I want to say to you of the jury, Mr. Norris has explained that he hasn't seen this cash either, that he reconstructed it, often (1055) by adding, subtracting, dividing or arriving at averages. And I as an accountant say that is an absolute inaccurate method. Cash has to be shown as correct or not. If we don't know it, then I say I don't know; I say that. I say I do not know (1056).

* * *

A. (Continuing) Now, may you remember, please, one hundred sixty-eight thousand dollars—according to the explanation furnished us, was about one hundred thirty thousand dollars, which shrinks to that amount of January 1, 1949, or December 31, 1948. But this twenty-seven thousand dollars were left of the sixty-three thousand dollars which were Mrs. Epstein's on January 1, 1948.

Now, I must again say that I was told that when Mr. Epstein needed cash, he could borrow it all he wanted, or wanted to invest money, he could take his (1057) wife's money—and invest it from here, or borrow it from her. This was the explanation I got explaining the use of the money.

Well, there was another explanation that had been offered, and I followed this explanation. That is, that the Kirschner money that is the third item on this statement had not been touched before the end of 1949. He said that expressly. He referred to the legal situation, which I looked into. I saw all of these Acts. And he swore to it; I accepted the explanation as being correct.

He also said that this money was used to invest as soon as he could, and this he did in the following two years. There is not a bit of money left the end of '52 (1058).

* * *

He has got this—and depreciation on business car is of course our figure. As Mr. Norris stated in the Government's statement, there were two cars bought, one '49, one '50. In '49, if I remember right, it was an Oldsmobile. In '50 was a Buick. Mr. Epstein said the (1060) Oldsmobile was his business car, and the Buick the family car. He is entitled to depreciation. It is true that he hasn't taken this depreciation on the return. But if we come down to the figures, we have to give him credit for it. So, as you see why on the four years basis customary, a twenty-five percent depreciation rate on passenger car that is spread over this four years, is increased—the depreciation reserve for that car. And if you will see, that is even a slight error. The 2,633 here—we wind up 2,634. There is a dollar difference in the computation of the depreciation.

Now, this leaves Mr. Epstein with a net worth increase for each of these years—the $32,812.00, $19,344.00, and here is a negative figure of $559.09. Here is a negative figure, '52—$2,631.23.

As the Government has explained to you, these figures do not mean too much for net worth statement, because they must be adjusted by those items which the taxpayer cannot take on his income tax return. That is the Federal income tax he must pay; that is life insurance he pays on his own life; and that is all his personal expenses.

Now, there was income tax, life insurance premiums, salaries of domestics. There are three items that are (1061) familiar to you from the other statement you got—are just like the Government's.

So are automobiles purchased, I should have said there.

The personal expenses of defendant's—now, I do have most of defendant's checks, and Mr. Summers helped me, and my figures are somewhat different from the figures of the Government. That is easily explained. There might be a difference of opinion and interpretation. And I want to point out to you the major item I remember that was, as I understand Mr. Norris' statement, was that I did not include the fixing up of the residence into the personal expenses, because I think this fixing up of the residence should be on the real estate and improvements of the couple Epstein.

Now, I did not include—I want to also say this. I did not include his medical expenses, and at times in '52 they were running high. Now, not all of his medical expenses are deductible. I admit that. But the major part of it usually is. I have not got a complete break that down.

I state to the jury I haven't included—I say this—all this information is not, as you might believe, for Mr. Epstein. This is against him. But I want to (1062) state what I did.

Now, you will remember that the capital gains and losses are stated somewhat different, if I remember, on the Government's chart. Now, a man is entitled, when he sells property or capital, other capital assets, to report his capital assets to the Government on a preferential rate —twenty-five per cent. This is computed by breaking this long-term capital gain in half and figuring fifty per cent, on one-half of his capital gain. Now, therefore, one-half of these figures for this he is allowed to restore, according to what they are, your losses. I have used the net figures for the long-term—not short-term capital gains—the long-term capital gains from the return.

Now, however, as you will remember, in '49 the Kirschner store was transferred, after the law was changed, to Mr. Epstein, and there was a transaction on the books transferring this amount. Therefore, this amount is an allowable deduction. It is a non-taxable transaction. The Government has deducted here, if I remember right, seventeen thousand dollars. This has always been a

method of dispute, because the Government feels the opening inventory way back of '37 should now come back. But what he really got was this inventory (1063), what he took in. So I used the inventory as he took it in.

Now, Nat Epstein, Mr. Epstein's son, had testified that he had given his father thirty dollars a week for that nurse. I used this as a deduction against his living expenses. He got that in cash.

He had—Mr. Maynard Epstein had testified that he gave him twelve hundred and fifty dollars in cash. Now, this was a non-taxable transaction, the sale of his partnership interest. At least, the way it was handled at the time —yes, it was a non-taxable.

Now, it was established by testimony that Mr. Epstein never claimed his losses from Jaffe at Osceola, but he is entitled to them.

So that leaves then only this item—twenty-six hundred.

In '48, as I found out, the Government has allowed or charged Mr. Epstein with ten thousand dollars living expenses. I found—right or wrong—I did as well as I could—but $7,400.00 of it; the $2,600.00 was spent less—should be restored to the cash he can spend there, as I did.

When you get through with these figures, you will find that the taxable income for 1949 would be $18,741.03; for '50, $33,101.60; for '51, $16,214.44; '52, $12,396.66 (1064). The total, 80,453.73. He reported on income tax returns eighty-eight thousand dollars.

But I want to say to you again I am not happy about net worth statement—

Mr. Hodges: May it please Your Honor—

A. (Continuing) So that then should explain this (1065).

* * *

Cross Examination by Mr. Vaden (1066).

* * *

A. As I understand, the investigation started in '53, you understand.

* * *

A. * * * In other words, Mr. Epstein kept this money in the safe a long time. In '49—the Revenue Agent investigated in '46, and gave him a few hundred dollars tax, maybe, but gave him clear.

Q. Then he started putting it in circulation? A. Yes, I would check the reason why.

Q. Then up until then he had held the money? A. Yes. He said this, when I asked him the question on this. He said, "Mr. Deutsch, I want to tell you—"

Q. Did you—? A. (Continuing) —"My health was failing. I had planned to retire. I was looking for quite a while as a younger partner, and I had in mind to get out of this store, get—let a younger partner take over. And I would invest whatever I had accumulated in investments, real estate and other deals"—as he said, "and would try to live on that."

And this was his explanation.

And he said that this eighty thousand dollars in (1074) Kirschner money was part of that he wanted to invest.

Q. I wish to know whether or not you made inquiry of him—and I am sure you did as an ex-Revenue Agent, handling, you say, you handled as you say an average of five hundred cases a year? A. No, all together five hundred case years in three years.

Q. What? A. You know, we count by case years. Check a fellow two or three years, and that is three years.

Q. I ask you—I am sure you asked him whether or not—or why it was, over a period from '34 up until the end of '52, with one hundred sixty eight thousand dollars in currency, he floated hundreds of loans down at the Manhattan bank, in amounts as high as forty-five and fifty thousand dollars? Did you ask him about that? A. Mr. Vaden, I had his loan account in my hands. I analyzed it. I had to, because I had to trace every one of his deposits in his bank account back to the loans.

Mr. Vaden: I see.

A. (Continuing) And he had to explain that to me, too.

Mr. Vaden: Yes.

A. (Continuing) Because this question, I have asked (1075) him this—I said, "What is the idea in borrowing when you have it?" And he said this was covered by this investment. "I borrowed it, I invested it, and I left with investment as collateral, as securities, down at the bank as security." (1076).

* * *

This was All the Evidence Introduced in the Case.

Mr. Will Gerber: We renew our motion, just as we did, at the conclusion of all the proof.

Can we approach the bench, if Your Honor please, for just a moment?

The Court: Yes.

(The following occurred at the bench, and out of the hearing of the jury:)

Mr. Will Gerber: I just want to be sure the record recites that at the conclusion of all the proof we made the same motion, with the same words and figures we did at the conclusion of the Government's proof, for a verdict of not guilty.

The Court: All right. Let the record show the motion is overruled (1078).

June 25, 1956.

The trial of the case was resumed at nine-thirty o'clock A. M., June 25, 1956, when and where proceedings were had, as follows:

The Court: Come around here, gentlemen, just a moment, if you will.

(The following occurred at the bench, and out of the hearing of the jury:)

The Court: The Clerk advises that one of the jurors' mother—Mr. Bell's mother had a stroke yesterday and he says the doctor—I haven't talked to him but he told the Clerk that the doctor told him he did not know how long she would last, or anything about it.

Mr. Will Gerber: I think we will get through here, I think, in a few hours. I don't want to take a lot of time here.

The Court: I don't know what—is he asking to be excused?

The Clerk: He says he is the only one—

The Court: He says that his mother—

The Clerk: He is the only one she knows.

The Court: He is the only one his mother (1082) recognizes. Is he asking to be excused?

Mr. Will Gerber: Judge, we can't agree to it.

The Court: If a man's mother is dying, he ought to be excused. I think we all agree to that.

Mr. Will Gerber: Well, it is up to you.

The Court: Well, if a man's mother is dying—we have all been through it.

Mr. Will Gerber: It is up to you, Judge.

The Court: That is why we have the alternate juror here.

Mr. Will Gerber: I have never had a thing like this happen in the course of a trial.

Mr. Fitzhugh: If defense counsel won't agree, I don't think—I am not certain about this.

The Court: Has the juror asked to be excused?

The Clerk: He has asked to be excused, or would not have said anything about it. Of course, he says he doesn't think there is anything he personally can do except be by her side. But she is in such condition the doctors can't dare move (1083) her to the hospital. She is at home.

The Court: Has he asked you to communicate this to the Court?

The Clerk: Yes, sir.

The Court: Has he asked to speak to the Court about it?

The Clerk: He has asked me to, and asked if it was all right to talk to me about it or should he talk to the Court.

The Court: Mr. Bell, would you come over here just a moment, please, sir?

You are Mr. Oscar Bell?

Juror Bell?

Juror Bell: Yes, sir.

The Court: And the Clerk has advised that your mother is very sick.

Juror Bell: Yes, sir, she had a stroke this morning.

The Court: Had a stroke this morning?

Juror Bell: Yes, sir.

The Court: And she is under the care of doctors, I assume.

Juror Bell: Dr. Cox, John Cox.

The Court: And what is your pleasure about this? I say your pleasure; what is it you think (1084) your duty is in the matter? Can you—?

Juror Bell: Well, I asked Dr. Cox if there was anything I could do, sir, and he said that there was not. My pleasure, if you call it that, is anyone would rather be with their mother when they are in that kind of condition.

The Court: Are you asking to be excused from further service on this jury?

Juror Bell: If it would be permissible, yes, sir.

Mr. Fitzhugh: Of course, we would probably get through this morning. That is something—

The Court: Yes. Are all the jurors here, including the extra—?

The Clerk: Yes, sir.

The Court: The alternate.

All right, just resume your seat over in the jury box for the present, Mr. Bell.

Juror Bell: All right.

The Court: I would like for the record to show that this is a discussion out of the presence and hearing of the jury. Now, the juror is in effect asking that he be excused from further service on this jury. And if either side would (1085) care to comment about it, I will hear you at this time.

Mr. Fitzhugh: Well, of course I—

The Court: Mr. Gerber—

Mr. Will Gerber: It is up to Your Honor.

The Court: How is that?

Mr. Will Gerber: It is up to Your Honor.

The Court: You think it is a matter for the Court?

Mr. Will Gerber: We are not going along with the Court on it.

The Court: How is that?

Mr. Will Gerber: We are—

Mr. Fitzhugh: He is objecting.

Mr. Will Gerber: We are not going along with the Court on it. It is a question for the Court.

The Court: You are not going along with the Court on it?

Mr. Will Gerber: No, sir.

The Court: What do you mean by that?

Mr. Will Gerber: I don't think under the circumstances that this juror has disqualified himself (1086).

The Court: All right, Mr. Fitzhugh.

Mr. Will Gerber: I have had the same situation in my family, if Your Honor please, and I know it has lasted for weeks at a time.

The Court: It seems to me I recall that the last criminal trial we had here, the morning the trial was to commence we, under similar conditions, continued the case for you. I recall that.

Mr. Fitzhugh, do you want to comment about it?

Mr. Vaden: We have no objection, whatever the Court wants to do.

Mr. Fitzhugh: We have no objection—leave it up to the Court, whatever the Court wants—

The Court: Well, the juror with his mother in this very serious condition would not very likely put his mind on this lawsuit. I think his request that he be permitted to go to his mother's bedside is entirely reasonable, and the Court will take the responsibility for saying that he may be excused from further service on this jury. We

have an alternate that we have been carrying along here for a week, and we will put the alternate in his place (1087.)

Mr. Will Gerber: To all of which we note an exception.

The Court: Just a moment.

(The trial of the case was continued in the presence and hearing of the jury, as follows:)

The Court: It was developed here this morning, gentlemen of the jury, that the mother of one of the jurors, the mother of Mr. Oscar Bell, one of the jurors, is very seriously ill, and he has asked to be excused from further service on this jury, and the Court is now excusing Mr. Bell.

That means, Mr. Matthews, that you will step in as the alternate and serve in Mr. Bell's place, you understand.

And so we will let you go at this time, Mr. Bell.

Juror Bell: Thank you.

The Court: All right, if you have got some special requests, you gentlemen come around (1088).

(The following occurred at the bench, and out of the presence of the jury:)

(Discussion at the bench between the Court and counsel.)

The Court: Mr. Marshal, suppose you take the jury back to their room for the present, if you will.

Mr. Hal Gerber: Do you want us to go back to the counsel table?

The Court: Sir?

Mr. Hal Gerber: Do you want us to go back to the counsel table?

The Court: No, you stand here.

(The jury thereupon retired from the court room, and proceedings were continued out of the presence and hearing of the jury, as follows:)

(Discussion between the Court and counsel, going over special requests tendered.)

Mr. Vaden: Let the record show the Court (1089) inquired of defendant's counsel whether or not they wanted him to charge the jury relative to the question of their client's failure to take the stand or anything relative thereto, and they have stated they did not wish that done.

Is that right, counsel?

Mr. Rond: We had told the Court that before the United States Attorney decided to call you up here. We had agreed with the Court and made that announcement.

Mr. Vaden: That is good.

(Further discussion between the Court and counsel in re special requests tendered.)

The Court: Gentlemen, we are not quite through here, not quite through.

Get the reporter here.

Let the record show that the defendant has tendered eighteen special requests, all of which have been duly considered by the Court and marked refused except Special Request Number 16, which the Court will give.

I believe under the rules you are required to state the reasons for your exceptions—(1090)

Mr. Hal Gerber: I have authority—

The Court: And let the record show the defendant excepts to the Court's rulings.

And as I was about to say, I believe the rule requires that you state the reasons for your exceptions into the record at this time. However, I suggest that you might delay that until after you have heard the Court's general charge, as you may desire to withdraw some of these, at least. I think most of the ideas embraced in your special requests will be duly covered by the Court. If that is agreeable, we will handle it that way.

Mr. Hal Gerber: That is agreeable. I would like just to say we have authority for each one of these, which were taken from specific cases which have been reported in the Federal reporter and in the United States reporter. And I have gotten these up so hastily I did not have a chance to put them on there, but if Your Honor would like to have them, I can supply them later.

The Court: I don't believe that will be necessary. But you are agreeable to the Court's suggestion that you delay until after the general (1091) charge before stating your reasons—

Mr. Hal Gerber: Yes, sir.

The Court: (Continuing) —For your exceptions into the record?

Mr. Hal Gerber: Yes, sir.

The Court: Is that all?

The Court: All right, bring the jury in, bring them in, Mr. Marshal.

(The trial of the case was continued in the presence and hearing of the jury, as follows:)

The Court: All right, you may proceed with your arguments when you are ready.

Argument in behalf of the Government was thereupon presented to the Court and jury by Mr. Hodges.

The Court: Suppose we have a short break in the proceedings here, gentlemen.

Take the jury out for about ten minutes, Mr. Marshal.

(Recess.) (1091A).

Argument in behalf of the Defendant was thereupon presented to the Court and jury by Mr. Will Gerber.

The Court: It is going on ten after twelve, and gentlemen, we have one further argument, and we have the Court's charge, and I suggest that you come back at one-fifteen.

Don't discuss the case, however, in the meantime, as you understand.

Come back promptly at one-fifteen.

Adjourn it until that time, Mr. Clerk.

(Adjournment.) (1092).

Afternoon Session, June 25, 1956.

The trial of the case was resumed at one-fifteen o'clock P. M., pursuant to adjournment, as follows.

The Court: All right.

Mr. Fitzhugh: Am I ready to proceed?

Closing argument in behalf of the Government was thereupon presented to the Court and jury by Mr. Fitzhugh.

Thereupon, the Court charged the jury, as follows (1093):

The Court: Gentlemen of the jury, the indictment in this case, which, as you understand I am sure, is a means only by which the defendant is brought before this Court and jury for trial, charges the defendant with four separate offenses in four separate counts, with willfully and knowingly attempting to defeat and evade the payment of income taxes for the years 1949, 1950, 1951 and 1952; in that he prepared, or caused to be prepared, signed, or mailed, or caused to be mailed for filing, false and fraudulent tax returns.

The defendant, to each of the separate counts of the indictment, has entered a formal plea of not guilty. More specifically, he denies there was any willful intent on his part to evade his proper income taxes for the years in question through the preparation, signing or mailing of false and fraudulent returns, or aiding, abetting, or assisting in the doing of either of these things.

The law makes it the duty of the Court to give in its charge to the jury the applicable law (1094) of the case, and duty of you jurors to carefully weigh and consider all of the evidence adduced, and apply it to the law as given you by the Court in making up your verdict or verdicts. You jurors are the sole judges of the facts, and also the judges of the law as applies to the facts in the case, but cannot disregard the law as given you by the Court. The jury in considering the case should entertain no sympathy or prejudice, or permit anything but the law and the evidence to influence it in determining its verdicts. You should render verdicts with absolute fairness and impartiality as you think truth and justice dictate. Every fact and circumstance in the case you may consider in arriving at your verdict or verdicts.

I shall now explain to you the law as applicable to the charges in this indictment.

The statute, for your guidance, upon which each of the four counts of this indictment are based, being Title 26, Section 145(b), of the United States Code, reads as follows (1095):

> "Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than ten thousand dollars, or imprisoned for not more than five years, or both, together with the costs of the prosecution."

So, gentlemen of the jury, it is contended by the Government under this statute the defendant, Mr. Epstein, did willfully and knowingly attempt to evade his taxes for the years in question by preparing, or causing to be prepared, signing, or mailing for filing, or causing to be mailed in the Western District of Tennessee, false and fraudulent returns which did not show the defendant's true income, with the intent (1096) to evade or defeat his just income tax liabilities.

Now, members of the jury, may I say in the outset, the Government, under the law, relies largely on a taxpayer's own disclosure of his income in the collection of income taxes. In other words, our income tax system is based upon the voluntary disclosure of income by taxpayers. This system functions properly only when taxpayers rendered honest accounts which go into tax returns. Needless to say, fraud and deceit on the part of a taxpayer prejudices the orderly administration of the Government's revenue system.

It is important, as you understand, I am sure, that the income tax burden should be ratably and fairly distributed among all of our people according to law, and for the protection of that system and its revenues the Congress has imposed penalties to enforce obedience to its tax laws.

Members of the jury, a taxpayer, as I am sure you understand, has the right to limit his tax liability in his income tax returns to the amount (1097) actually due and owing. He may, by legal and proper methods, take advantage of any permissible procedure to lessen the amount of his tax, which is sometimes referred to as minimizing one's taxes. Of course, it is not the purpose of the law to penalize mere negligence or carelessness of a taxpayer, honest differences of opinion or innocent errors which may be made by the taxpayer in the preparation of his returns. The taxpayer may, however, fraudulently seek to evade or lessen the amount of his taxable income, and that is what we refer to as tax evasion, and it is with that phase of the matter we concern ourselves in a consideration of the case on trial. That is the charge made by the Government in this case with respect to the separate tax years here involved. The Government, in other words, contends in this criminal trial that this is an appropriate case for assessment of penalties provided for willful attempts on the part of the defendant, William Epstein, to defeat and evade his just tax obligations.

The first step, I might say, in arriving at the income of an individual, upon which the tax is imposed, is a (1098) determination of the gross income of the individual.

For your guidance, the term "gross income" as defined in the law and as referred to in this trial, includes gains, profits and income derived from salary, wages or compensation for personal services of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, including partnerships, commerce, or sales or dealings in property, either real or personal, growing out of the ownership or use of, or interest in such property, also from interest, rents, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. You can see from this definition that reportable income under the Federal income tax laws is very broad in scope.

After having determined the gross income of an individual, the next step provided by the statutes for arriving at the income upon which the tax is computed is to

deduct from the so-called gross income such deductions as the statutes permit. That (1099) is, an individual is permitted to deduct from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business; including a reasonable allowance for salaries or other compensation for personal services actually rendered such individual, also rentals for the use or possession of property connected with and used in a trade or business, also certain taxes paid by the individual in the taxable year, and other deductions.

After such of these deductions from gross income as the individual is entitled to are made, the amount remaining is the adjusted gross income. In determining net income, the taxpayer is permitted to deduct from adjusted gross income either the optional standard deduction fixed by law or the separate amounts paid by him during the year for certain charitable contributions, interest, taxes, medical expenses, casualty losses, and other miscellaneous personal deductions.

The term "false" and "fraudulent," as you have observed, have been employed in the trial of (1100) this case with respect to all counts of the indictment, and, for your information, and as an aid to you in your consideration of the issues in this case, the Court instructs you a tax return is false when it is untrue, erroneous or incorrect and when it is designed to deceive. A return to be fraudulent, must not only be false, but the party making it must have known it was false when he made it, and made it with the design to influence action by another or others relying thereon.

Concerning the law of this case with respect to each of the four separate counts herein, the Court instructs you the gist of the offenses charged in these separate counts of the indictment is willful attempt on the part of the defendant, Mr. Epstein, to evade or defeat taxes imposed by law. The word "attempt" as used in the law involves two elements, first, an intent to evade or defeat the tax, and second, some act done in furtherance of such intent. The word "attempt" contemplates the taxpayer had knowledge and understanding that during the years alleged he had incomes (1101) which were taxable and which he was

required by law to report and that he for each year fraudulently attempted to evade or defeat the tax thereon, or a substantial portion thereof, by preparing, signing, or mailing tax returns which failed to report all the income which he knew he had during such periods and which he knew it was his duty to state in his returns for such periods.

The attempt to evade or defeat the tax, as stated, must be a willful attempt; that is to say, it must be made with intent to deprive the Government of the tax imposed by law, and which it was the duty of the defendant to pay to the Government. The attempt, I say, again, must be willful; that is, intentionally done with a bad purpose and an evil intent that the Government would be defrauded of the taxes due from the defendant.

To the end that you will fully understand, the Court instructs you the requirement that an attempt to evade taxes be shown to have been willful, or willfully done, means that you must pass, to some (1102) extent, on the mental state of the defendant at the time the alleged attempt, or attempts, occurred. Willfulness, as I say, is largely a matter of intention. There must be a wrongful intent in the defendant's mind before he can be found guilty of knowingly and willfully attempting to evade taxes. It is necessary that a person making a willful attempt to evade taxes have knowledge of his tax obligations and have knowledge that such obligations exceed the amount being reported by him in his returns. The mere fact that a taxpayer knew he had income he did not report and did not pay tax on, even though he might have known a tax was due, is not in and of itself sufficient to constitute a violation of the law here involved. There must be a willful and positive commission of an act, or acts, and an intention to evade the tax. Of course, the important question of the defendant's intent with respect to each of the separate offenses herein charged is for you to decide, taking into consideration all of the facts and circumstances shown in the evidence.

The important question of willfulness or (1103) intent, as I say, is a matter for you jurors to determine, and, as intent is a state of mind, as I say, and since it is not possible to literally look into a person's mind to see what

went on, the only way you have of arriving at the intent of the defendant in this case concerning the matters under investigation is for you to take into consideration all of the facts and circumstances shown by the evidence, including the testimony and any exhibits, and determine from all such facts and circumstances what the intent of the defendant was at the time, or times, in question.

On the question of intent, concerning any particular phase of the case, the jury may consider whether the defendant acted in good faith upon the advice of legal counsel, after a full disclosure of all the facts to his legal counsel. And the Court instructs you, with respect to the separation of what has been referred to in the trial as the Kirschner Sales Store from the defendant's pawn shop; as required by an act of the Tennessee Legislature, that this is a matter you may consider on that phase of the case which deals with the filing of a separate tax (1104) return for the sales store and whether or not the defendant in filing a separate return or permitting such a separate filing willfully intended to evade by fraudulent means his just taxes for any given tax year under consideration in this case.

The Court has tried to impress upon you, members of the jury, that in determining the guilt or innocence of the defendant of the separate charges in the indictment, the willfulness of the defendant's act, or acts, is important. When an act is willfully, that is intentionally done, may not always be shown by direct evidence. It may often be inferred from the conduct of the taxpayer, taking into consideration that the normal mind must realize the probable consequence of his voluntary act, or acts. Willfulness may be inferred by the saying or doing of those things designed to bring about and put into effect or into course of operation an unlawful act. This may be demonstrated by direct evidence of the several acts and general conduct of the taxpayer. It may likewise be inferred or gathered from the circumstances (1105) surrounding the acts or conduct of the taxpayer. These circumstances may be considered along with any direct evidence. Circumstantial evidence is that which relates to a series of other facts than the direct facts in issue which, by experience, have been found so associated with those facts in issue that in the relation

of cause and effect they, themselves, lead to a satisfactory conclusion. Such evidence is founded upon experience and observed facts, as tending to establish a connection between the known and proven facts and those sought to be proved or inferred. Where it becomes necessary to establish the proof of fact by circumstantial evidence alone, with respect to whether there was willfulness in this case or with respect to other material matters involved in the case, it is not sufficient to entitle the prosecution to a conviction that the circumstances coincide with, account for, and render probable the guilt sought to be established, but those circumstances must exclude to a moral certainty every other hypothesis or explanation but that of guilt.

Further, ~~in an effort to be helpful,~~ the Court instructs you on the question of willfulness (1106) or intent to evade income taxes, by way of illustration and not by way of limitation, there are certain matters which you might consider, pointing to intent, so far as tax evasion is concerned, if you find any one of them existed in this case: Concealment of assets, covering up or concealment of sources of income, handling one's affairs to avoid the making of usual records, and any conduct, the likelihood of which would be to mislead or conceal. I might say here, it is not permissible under the tax laws for one who owns more than one business to split or lessen his income tax liability by filing or permitting the filing of a separate return for one of such businesses, even though the return is made out and filed in the name of a third person.

You are instructed, members of the jury, that a person may not shut his eyes to obvious facts and say he does not know. He may not close his observations and knowledge to things which are put out in the open and are obvious to him and say, "I have no knowledge of those facts." He must exercise such intelligence as he possesses, and, if the evidence shows that he intended to conceal tax liabilities from (1107) the Government, then of course he was not acting in good faith. This question of ~~intent,~~ again, I say, is a question you must determine for yourselves from a consideration of all the evidence introduced before you.

Members of the jury, as the Court has said, the fact that a taxpayer may have known that he had income that

he did not report and on which he paid no taxes, even though he knew a tax was due, is not in and of itself sufficient to constitute a violation of the statute here involved. There must be, as the Court has explained several times, a willful and positive commission of an act, or acts, in the attempt to evade taxes, the purpose of which is to evade and defeat such payment, or payments. In this case, as the Court has tried to make clear to you, the Government contends with respect to all four counts of this indictment that the positive acts in the evidence before you are the preparation, the signing or the mailing of alleged false and fraudulent returns, that those returns were known to be false at the time, in that the proper income was not stated by the taxpayer. If those facts have been established (1108) beyond a reasonable doubt, then the offenses embodied in all counts of this indictment have been proven as required by law and you should find the defendant guilty; if not, or if you accept the defendant's contention or entertain a reasonable doubt concerning same, then, or course, the defendant on all counts should be acquitted.

So members of the jury, it is your duty in this case to determine from the evidence and from the instructions given you by the Court whether the defendant, Mr. Epstein, attempted for the years in question to defeat and evade Federal income taxes, or a substantial part of them, as charged in the four separate counts of the indictment. If he did, then it is for you to say whether or not the attempt, or attempts, were willful or intentional on his part. If you answer these matters in the affirmative, that is, if you find them to be true beyond a reasonable doubt, you will convict the defendant on all counts of the indictment. On the contrary, if you find in the negative concerning these matters, or entertain a (1109) reasonable doubt of same, you will find the defendant not guilty on all counts and so report to the Court.

Members of the jury, the Government, in presenting this case for your consideration, which primarily involves allegedly unreported income, you understand, has adopted, in its effort to establish its case under all four counts of the indictment, what has been referred to as the

net worth method in computing the defendant's taxes. The law provides that income taxes usually shall be computed in accordance with the taxpayer's method of accounting; that is, if the taxpayer keeps records and those records lend themselves to a proper accounting, so that his correct income may be determined. The method which he uses of keeping his books and records is up to the taxpayer, but the law also provides that if the taxpayer's system, which should include proper books, is not adequate or does not clearly reflect his true income, then a different method or basis for computation may be chosen, and, in this case, since it is contended the taxpayer's records for the years (1110) in question do not reflect the true income, and this is for you to pass upon, the Government has adopted, as I say, the method referred to throughout the trial of this case as the net worth method, or basis, for corroborating its contention that unreported income was received by the defendant, and for computing the taxes for the particular years in question. According to this method a taxpayer's net worth may be ascertained in the beginning of any tax year in question, or as close thereto as is reasonably practicable, to determine what he has accumulated as income during the particular year in question, considering, of course, all deductible items and eliminating all non-taxable receipts. You might say the net worth formula can be stated broadly in these terms: Increase in net worth, plus any non-deductible disbursements, minus any non-taxable receipts, equals the taxable net income. One way of ascertaining the net worth for a given period is through net worth statements furnished a banking institution or credit data furnished by the taxpayer to a credit reporting agency, such as Dun & Bradstreet, and, while it may not always be possible (1111) to obtain such statements at the exact beginning or at the exact end of a particular tax year it is necessary that the proof show from such net worth statements as are available, or other data, the financial status of the taxpayer for the year under investigation, and this you jurors will undertake to determine in your consideration of the evidence along this line and all the pertinent evidence in this case with respect to the taxable years 1949, 1950 and 1951 and 1952.

Now, the Government has introduced testimony, as I say, which it contends shows that there was an increase of the defendant's net worth for the particular years referred to, and this evidence of increase in the net worth may, as you understand, be considered by you as evidence, circumstantial evidence, I might say, of the defendant's alleged attempt to evade his tax liability for the years here involved. If you find the defendant knew of such increase in his net worth for the taxable years herein, 1949, 1950, 1951 and 1952, and that it meant to him, or should have meant to him, that he had net incomes (1112) in excess of the figures he placed or caused to be placed in his tax returns for those years, and with that knowledge signed or mailed or caused to be mailed for filing the four returns herein in an attempt to evade or defeat his tax liabilities, or any substantial part of same, then, that is evidence of willful evasion as it has been used in the statute and the indictment in this case, and you will so treat it, as I say, in your consideration of the four separate counts of the indictment in this case.

Gentlemen of the jury, the Court has tried to make clear to you what has been referred to as the net worth method which the Government relies on in this case to prove understatement of income for the years here involved, and, to clarify the matter, the Court explains further that a person's net worth is the difference between his assets and his liabilities at any given date. It is the difference between what he owns and what he owes at that particular time to define it again. If he has more assets at the end of the year than he had at the beginning, and if his liabilities remain the same, his net worth has (1113) obviously increased. However, only the cost price of the assets is to be considered. Mere increases in market value, which have not been realized, must not be taken into account.

The theory of the net worth method of proof is that if the Government proves beyond a reasonable doubt that the defendant's net worth, as the Court has defined it, has increased during the taxable year, it may be inferred that the defendant has had receipts of either money or property during the year; and if the Government satisfies you be-

yond a reasonable doubt that he had a source of taxable income and that the receipts did not come from non-taxable sources, you may find that the receipts constituted taxable income to the defendant. If, in addition to proving an increase in the defendant's net worth, the Government also proves that the defendant spent money on items which did not add to his net worth at the end of the year, items such as living expenses and taxes, it may be inferred that those expenditures also came from funds received during the year. Consequently (1114) such expenditures may also be taken into account in determining the amount of the defendant's net income for the year, provided they were not expenditures which the defendant was entitled to claim as deductions in computing taxable income on his returns.

The defendant, as you understand, contends in connection with the so-called net worth method employed by the Government in computing the defendant's taxes for the years here involved, that no appreciable or substantial increase of his net worth is shown in the evidence for the years in question or for any year involved, when it is considered that substantially one hundred and sixty-eight thousand dollars with which he is charged in the Government's net worth estimates was money which he and his wife had accumulated during years prior to the tax years in question and which had been kept in his safe at his Beale Street Pawn Shop, and used by him throughout the tax years here involved in the purchase of real property and for other expenditures and investments; that if amounts in excess of ordinary and regular income for those years are shown to have been expended by the defendant, (1115) this was possible through the use of this accumulated cash money. It is the position of the defendant, in other words, that the cash aforesaid in the sum of approximately one hundred and sixty-eight thousand dollars should be taken into consideration by you in any net worth analysis of the defendant's financial affairs for the four years here in question, and the Court instructs you that while the Government denies any such large sum of money was carried in the defendant's pawn shop safe, you should, if found by you to be true, consider the defendant's contentions in this

case in computing any tax liabilities of the defendant by the net worth method employed by the Government.

Gentlemen of the jury, in determining whether or not the starting point net worth is reasonably accurate, you may consider whether the Government has run down any reasonable leads suggested to the investigating Government agents, tending to establish the defendant's innocence, and has explored into any explanations advanced by the defendant or his representatives during the investigation. If you are satisfied that all such reasonable leads and (1116) explanations have been exhausted or refuted, this would be persuasive evidence which you could consider in determining whether the starting point net worth included all of the defendant's assets. Obviously, improbable explanations would not be entitled to as much weight as plausible and reasonable explanations. If you should find that the Government's investigation has failed to refute what seems to you plausible explanations, such failure may be considered by you in determining the validity of the starting point.

Members of the jury, in the four counts of the indictment upon which the defendant is being tried are found, as you know, specific figures setting forth the amounts of the defendant's alleged default or shortages. In this connection, the Court instructs you that the Government is not required to prove the exact amount of income charged in either count of the indictment to have been received by the defendant for a given period or the exact amount in default, but it will be sufficient to sustain the allegations of any count in the indictment so far as the amount of gross income, amount of net income, and the amount (1117) of tax due thereon is concerned, if any amounts are shown in the proof which are in excess of the amounts reported by the defendant and which show that a greater tax was due from the defendant for a given year or period than that which was shown upon his returns.

So, as I say, it is not necessary to a conviction that the Government prove the exact amount of unreported income of the defendant as charged in this case, nor the exact amount of the tax which should have been paid for each of the years involved. The Government's proof in this re-

gard is sufficient if it shows any substantial portion of the defendant's tax liability for the years in question, or any one of them, not to have been reported.

So, if you find, in your separate consideration of the four counts of the indictment which charge separate offenses, as I have said, and from all of the evidence, beyond a reasonable doubt, that the defendant did, on the occasions stated in the indictment, prepare or caused to be prepared, or (1118) signed or mailed or caused to be mailed for filing the tax returns as alleged, in which he did willfully and knowingly attempt to defeat and evade his income taxes fixed by law, you, in that event, should find the defendant guilty under the four separate counts of the indictment. On the other hand, of course, you will acquit the defendant on these separate counts if you determine these matters to the contrary, or entertain a reasonable doubt concerning the defendant's guilt as to them

Under the law, members of the jury, a taxpayer need not keep books of account of any particular nature. It is not necessary that he personally participate in the keeping of his books and records. He may employ another person to keep his books and another to prepare his tax return. He may rely in good faith upon the person who collects data for or who prepares his returns to include in same a true statement of facts with respect to his income. As I say, he may in good faith rely on a bookkeeper or an accountant in such matters, and the taxpayer, relying upon another, as stated, would not be guilty (1119) of willfully attempting to evade income taxes if such return does not reflect true facts, or the true condition of the books and records of the taxpayer, unless such deviation is with the knowledge, connivance, consent or acquiescence of the taxpayer. In the preparation of an income tax return by another, it is the duty of the taxpayer to make known to the person preparing his returns all true sources of income not otherwise known to the person preparing the return and to disclose all other information which may be within the knowledge of the taxpayer which bears upon the correctness of the return. If, in the preparation of the tax returns in this case you should find that the defendant, William Epstein, in good faith, fully

disclosed to his accountant, Mr. Summers, all the pertinent facts material to his personal returns for the respective years in question, your verdict would be not guilty, for, in that case, there could be no willful attempt on the part of the taxpayer to evade the income tax due for those years. If, however, you find the defendant taxpayer did not, in good faith, make a full disclosure of all the facts material or pertinent to the returns, particularly with respect to (1120) income which was known to him and unknown to Mr. Summers, the accountant who prepared the returns herein, then you must consider the result of such omissions. An unintentional omission or error would not constitute a willful attempt to evade the payment of taxes. On the other hand, if you find the defendant knowingly and willfully, that is, intentionally, failed to make disclosures to his accountant who prepared the returns in question of facts material and pertinent to the returns, particularly with respect to his income, and unknown to his accountant, and further find beyond a reasonable doubt that said failure, if there was such, was for the purpose of evading or defeating, or attempting to evade or defeat, the payment of his taxes or any substantial part thereof, then your verdict or verdicts must be guilty with respect to that year, or those years, about which you have such a belief.

The taxpayer, as I say, need not be the actual bookkeeper or record keeper to be familiar with the affairs and finances of his business. It would present an odd situation, indeed, if a taxpayer (1121) charged by law with the duty of filing a return, could sign and file a false return; one made to defraud the Government and escape punishment by disclaiming knowledge of that which he has sponsored. Of course, he would not, as I have said, be liable for innocent clerical mistakes; but he must be held to know that which it is his duty to know, and which he solemnly promulgates; and it is for you to determine from all of the evidence whether the defendant, William Epstein, had knowledge of the alleged falsity of the returns in this case when they were prepared, signed or mailed, for filing to the Nashville, Tennessee, office of the Director of Internal Revenue.

The Court instructs you the signing by a taxpayer of an income tax return prepared by another makes it the taxpayer's return; that if it is false and fraudulent and the taxpayer knows it to be so, he violates the law when he mails it or causes it to be mailed to the Director with an intent to evade the payment of his proper income taxes.

The Court instructs you that whoever directly commits any act constituting an offense (1122) defined in any law of the United States, or knowingly aids, abets, counsels, commands, induces or procures its commission is a principal and punishable as such.

Also, one who causes an act to be done which, if directly performed by him, would be an offense against the United States, is a principal and punishable as such.

Gentlemen of the jury, I believe the Court, during the course of these instructions, has already advised you fully concerning the issues of this case. So you will fully understand, however, it is briefly the Government's contention that the defendant, William Epstein, knowingly attempted to defeat and evade his proper income taxes for the years 1949, 1950, 1951 and 1952, respectively, by preparing, or causing to be prepared, or by signing, or by mailing, for filing with the Director of Internal Revenue, or causing to be so mailed, false and fraudulent income tax returns for the years mentioned.

The Government contends it has proven beyond a reasonable doubt willful failures on the part of the defendant to report taxable earnings and income (1123) derived during each of the four years in question from businesses owned and operated by him and from numerous transactions with respect to real estate and other investments which he was obliged under the law to report, and willfully failed to report, and that his willful failure to so report same in his tax returns for the years involved resulted in underpayments of income taxes to the United States Government of approximately seventy-six thousand dollars. The Government contends the defendant for the four years under investigation in this case should have reported net income of approximately two hundred and thirty-five thousand dollars, instead of approximately eighty-eight thousand dollars as shown by his tax returns,

a difference of approximately one hundred and forty-six thousand dollars.

More particularly, it is the Government's contention with respect to the year 1949 that the defendant on trial attempted to defeat and evade his income taxes by preparing, signing, or mailing for filing with the Director, a fraudulent return wherein it was stated that his net income was $20,105.62, and the amount of tax due and owing thereon was $4,278.96, (1124) when the defendant at the time well knew his net income for the year 1949 was $60,633.24, upon which tax owing the Government, the United States Government, was $22,844.03.

The Government contends with respect to the year 1950 that the defendant on trial attempted to evade his just taxes by reporting, signing and mailing a fraudulent return wherein it was stated that his net income was $37,-142.46, and the tax due and owing there was $11,225.82, when the defendant at the time well knew his net income for the year 1950 was $66,358.55, upon which the net tax owing the United States of America was $26,874.35.

The Government contends with respect to the year 1951 that the defendant on trial attempted to evade his just taxes by preparing, signing or mailing a fraudulent tax return wherein it was stated his net income was $16,-526.59, and the tax due and owing thereon was $3,866.31, when the defendant at the time well knew his net income for the year 1951 was $69,325.84, upon which the tax owing the United (1125) States of America was $32,-303.39.

The Government contends with respect to the year 1952 that the defendant on trial attempted to evade his just taxes by reporting, signing or mailing a fraudulent tax return wherein it was stated that his net income was $14,395.42, and the tax due and owing thereon was $3,-492.62, when the defendant at the time well knew his net income for the year 1952 was $38,792.41, upon which the net tax owing the United States of America was $14,-846.17.

If, after a careful consideration of all the evidence in the case and the instructions as given you by the Court, you find the Government has proven its case by the re-

quired quantum of proof with respect to either one or all counts of the indictment herein, you will vote to convict the defendant and report to the Court a verdict, or verdicts, accordingly.

On the other hand, the defendant denies all of the matters and things charged against him in all four counts of the indictment and contends the Government has not proven its case with respect to (1126) any count of the indictment by the required quantum of proof. He denies he had taxable income which was unreported for the so-called indictment-years, and contends his income from all sources was accurately reported. He has entered a formal plea of not guilty as to the separate offenses charged.

More particularly, the defendant contends, briefly, that if the evidence in the case shows accumulations, profits or income from transactions in real estate, investments or other holdings of the defendant, or expenditures during the tax years in question, or any of them, that same could and would not increase or enhance the defendant's income taxes under the net worth method of computing them employed by the Government for the tax years under investigation when it is considered that the defendant held in his safe in his Beale Street store substantially one hundred and sixty-eight thousand dollars in cash money which was accumulated during years prior to the tax years in question, and which money was used or released by him throughout such tax years, with respect to any expenditures or investments referred to in the proof. The defendant, therefore, contends the net worth (1127) method employed by the Government in calculating or estimating the defendant's net income for the years here involved is of no probative value with respect to the charges against him, and that you should so find in your consideration of this case.

If, after a careful consideration of all of the evidence in the case and the Court's instructions with respect to the law, you find in line with the defendant's contentions concerning the matters charged against him in the four separate counts of the indictment, or if you entertain a reasonable doubt concerning same, or have a reasonable doubt with respect to the Government's contentions, you will

vote to acquit the defendant on all counts of the indictment and return verdicts of not guilty.

Gentlemen of the jury, you enter upon this investigation with a presumption that the defendant is not guilty of any crime, and this presumption stands as a witness for him until it is rebutted and overturned by the Government by competent and credible proof. It is, therefore, incumbent upon the (1128) Government, before you can convict the defendant, to establish to your satisfaction beyond a reasonable doubt that the crime, or crimes, charged in the indictment, and every constituent element thereof, have been committed; that the same were committed within the Western Judicial District of the State of Tennessee, Western Division, and that the defendant at the bar committed the crime, or crimes, in such a manner as would make him guilty under the law heretofore defined and explained to you.

By reasonable doubt is not meant any possible or captious doubt that may arise in your minds, but it is that doubt engendered after the application of the reasoning or logical processes to the evidence in the case, and an inability after such to let the mind rest easily upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict on any criminal charge, but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense, or offenses, charged.

You will take all of the evidence adduced (1129) in the case by the Government and by the defendant, and give it a full, fair and impartial consideration. If there are conflicts in the statements of witnesses it is your duty to reconcile them if you can, for the law presumes that every witness has sworn to the truth; but if you cannot, the law makes you the sole and exclusive judges of the credibility of witnesses and the weight to be given their testimony. In forming your opinions as to the credibility of a witness, you may look to proof, if any, of his general character; the manner and demeanor of the witness; the consistency or inconsistency of his statements; their probability or improbability; his ability and willingness to speak the truth;

his intelligence and means of knowledge. his motive to speak the truth or swear to a falsehood.

Gentlemen of the jury, there are several methods of impeaching or discrediting a witness. One is to prove that a witness at different times has made conflicting statements as to the material facts of the case as to which he testifies. Another is by a rigid and close cross-examination to involve the (1130) witness in contradictions and discrepancies as to material facts stated by him. Immaterial discrepancies in the statements of witnesses do not affect their credibility unless there is something to show that they originated in willful falsity.

And you, gentlemen of the jury, are to determine how far the testimony of any impeached witness in this case has been impaired by either of these invalidating processes. It is a question to be decided by the jury, like all other questions of fact, and is not to be judged by the number of witnesses for or against, but by their respectability, intelligence, consistency and means of information

Gentlemen of the jury, I might say at this point, the Government agents investigating this case, as you recall, interviewed the defendant, Mr. Epstein, on one or more occasions in the presence of the latter's accountant, during which time or times the defendant allegedly made certain statements dealing with the matters under investigation herein, and which the Government relies on as a part of its proof of the matters charged against the defendant (1131).

The Court instructs you that it is for you to say whether or not any statements attributed to the defendant during such interview, or interviews, were made, and, if found to be true, it is for you to say what weight you will attach to them in your consideration of the whole body of the proof. The Court in this connection further instructs you that before you are warranted in considering, or treating for any purpose, any such statement allegedly made by the defendant, Mr. Epstein, better practice requires that you must first be satisfied that he was advised by the agent, or agents, he did not have to make a statement, and that same, if made by him, could be used

against him in a court of law. But I do not believe the voluntary nature of the statements made in the interview, or interviews, referred to is questioned in this trial.

If there has been evidence of good character of the defendant in this case for the qualities of honesty and integrity, you may consider same, along with all the facts and circumstances in the case, on the question of whether or not there exists (1132), with respect to the separate counts of this indictment, a reasonable doubt concerning the guilt of the defendant. A person of good character for the qualities mentioned may, of course, violate the law, but is not as likely to do so as a person of previous bad character.

You, as the Court explained during the trial, are not to assume from the charts in evidence that the Government has established its case. These represent bare figures alone and possess no evidentiary value. You must find from the body of the whole proof that the figures and amounts are correct and supported by competent and creditable testimony independent of these charts, before you can consider the charts for any purpose.

The Court instructs you that if any juror has any information bearing on the issues in this case which has not been touched on in the evidence during the trial of this case, it would not be proper for him to consider the same in arriving at a verdict, or to impart it to other members of the jury during the jury's deliberations.

When you retire to consider your verdict, or verdicts, you will first inquire if the defendant (1133) is guilty of the offense, or offenses, charged. If you find beyond a reasonable doubt the defendant guilty, you will so state in your verdict, or verdicts. You will consider the four charges or counts of the indictment separately, and designate in your verdict, or verdicts, on which count, or counts, defendant is found guilty beyond a reasonable doubt, and on which count or counts he is found not guilty.

You do not fix the punishment in your verdict. This is left to the sound discretion of the Court in the event you return a guilty verdict or verdicts.

If, upon all the proof, you have a reasonable doubt of the defendant's guilt of the offense, or offenses, herein

defined and explained to you, it is your duty to acquit the defendant, and your verdict will be not guilty.

You will agree upon your verdict mutually and not by any gambling or speculative process. And your verdict, or verdicts, must be by unanimous agreement, I am sure you understand that (1134).

With these general principles firmly fixed in your mind, you will apply them carefully to the facts and circumstances of this case under the law as given you in these instructions.

Members of the jury, you are not to single out any certain part of the Court's instructions or any particular point or instruction given you by the Court, and ignore the others, but you are to consider all of the instructions as a whole and to regard each in the light of all the others.

Now, preliminarily to your being accepted and sworn as jurors in this case, you were examined by counsel for both the Government and the defendant as to your competency and qualifications to act as jurors in this case. As a part of such examination, each of you answered all questions asked by counsel. Your answers showed that you were competent and qualified to act as jurors in this case and the parties to this prosecution accepted you as jurors on the faith of your answers. The answers you then made to the questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy are as binding on you now (1135) as they were then and should so remain until you are finally discharged from further consideration of this case. It would be improper for you to disregard the answers which qualified you and rendered you competent as jurors in this case.

Any exceptions to the charge, gentlemen?

Mr. Vaden: Just one minute, if the Court please.

Mr. Hal Gerber: We have several.

The Court: All right, come around.

(The following occurred at the bench, and out of the hearing of the jury:) (1136.)

The Court: All right, Mr. Vaden, you have something for the Government?

Mr. Vaden: We don't have an exception, Judge. I was wondering if Your Honor meant to inform the jury that you usually take care of the question of punishment, and that they don't have anything—

Mr. Hodges: He charged that, Ed.

Mr. Vaden: Did you do that? That is the only thing I have.

Mr. Fitzhugh: No exceptions to the charge.

Mr. Vaden: None for the Government?

The Court: All right, you gentlemen for the defendant, do you have some exceptions? Not the special requests there, is it?

Mr. Rond: No.

Mr. Hal Gerber: First, we take exception to the manner in which the Court has charged the theory of the defendant. It is our contention that it was neither fully nor correctly stated; that it should have been fully and correctly stated under the authorities; that we can cite those authorities (1137).

The Court: In what particular is the theory not stated, or in error?

Mr. Will Gerber: I just don't think Your Honor stated it fully.

Mr. Hal Gerber: It was not fully stated.

Mr. Will Gerber: You gave the Government a pretty full charge on it, but did not give us a full theory.

Mr. Hal Gerber: It is our contention Your Honor stated the Government's theory not once but several times, and would very carefully state the Government's theory, but very carefully not state the defendant's theory.

In our theory the charge, insofar as it concerns the definition of false and fraudulent, is incomplete and did not accurately state the law.

In our theory the charge on willfulness, where the matter of intent was concerned, was incomplete, did not accurately state the law, that the inference to be drawn with respect to willfulness from the other evidence was not accurately stated, that that charge was prejudicial in that it was stated with respect to Kirschner, and we believe that Kirschner cannot be con- (1138) sidered in de-

termining the guilt or innocence insofar as this defendant is concerned for these years.

We consider that the charge on Kirschner, when it was given, and the place—the manner it was given, was prejudicial and not correct.

It is our contention that the charge on adequacy of the books was incomplete and not fully stated. That the definition of his net worth was incomplete and not accurately stated.

Mr. Rond: You mean opening worth—

Mr. Hal Gerber: Opening worth. That the net worth statements of the banks and Dun & Bradstreet, that the Court's charge in that respect did not correctly state the law because it left the inference that those statements were to be accepted by the jury at face value, and it is our contention that that is not the law.

Mr. Will Gerber: Extra-judicial statements, and they should have been corroborated.

Mr. Hal Gerber: In this connnection, the Court failed to charge corroboration at all.

And it is our contention that the bank (1139) statements and Dun & Bradstreet statements are not financial statements given to agents for the Government, but were extra-judicial statements which under the Smith authority should have been corroborated, and there was no statement corroborated.

The Court failed to correctly state the law on the question of allocation of increases in net worth to taxable years.

In this connection, the statement as to currently taxable income for the years in question was not accurately stated.

And further, in this connection, the Court stated that the jury was to draw an inference that increase in net worth, standing alone, constitutes taxable income. This was not a correct statement of the law, because, as I remember Holland, it says that this increase, coupled with proof beyond a reasonable doubt showing taxable source, is the only way in which this inference can be raised.

And the Court further charged that willfulness—the inference of willfulness, could be drawn from the same

proposition, and it is our contention that that was incorrect (1140).

It is our theory, or our statement here that prior accumulations of cash, and defendant's theory as to prior accumulations, and the general law as to prior accumulations was not accurately stated.

It is our contention that the manner in which the burden of proof was stated in the body of the Court's charge, and not with respect to the specific charge on reasonable doubt, was improperly stated in the general charge, because it was charged in a wrong way. It was put in such a way indicating the burden was on the defendant to prove that he had made a prior accumulation of cash, not upon the Government to prove that he did not.

It is our contention that differences on returns were not stated as announced by the Court in the Holland case, were not correctly stated, and they were not fully stated in reference to the indictment, the Court stating that the indictment need not be sustained directly, that the amounts stated in the indictment need not be sustained directly by the proof, but that any amount that was under-reported—

Mr. Fitzhugh: He did.

Mr. Hal Gerber: Well, now, Mr. Fitzhugh, (1141) let me make my objection for the record, will you, and the Court will rule on it, I am sure.

We say the law is it must be substantial—under-reporting must be substantial, in order to conform to this charge.

Mr. Will Gerber: We take further exception to the fact that the Court did not charge the jury that it was incumbent upon the Government to prove beyond a reasonable doubt that defendant earned in 1949, 1950, 1951, and 1952, the sums claimed to have been under-reported in 1949, 1950, 1951 and 1952.

The Court: Is that all?

Mr. Hal Gerber: Yes, sir, that is all.

(The trial of the case was continued in the presence and hearing of the jury, as follows:)

The Court: Take the case, ladies and gentlemen of the jury, consider same fairly and impartially, and report

to the Court such verdict or verdicts as truth dictates and justice demands.

Your foreman to be selected by you after you retire will sign whatever verdict or verdicts you agree (1142) to.

Mr. Vaden: If the Court please, we want to withdraw, before Your Honor gives these exhibits to the jury, the '53 and '54—

The Court: Let's get the jury out.

Mr Vaden: All right.

The Court: Take them out, Mr. Marshal. Take the jury into the jury room.

Suppose you have a short recess before you begin your deliberations, gentlemen.

Mr. Rond: Don't you want to call a short recess yourself up here?

The Court: No. Come around, gentlemen, on these special requests.

(The jury thereupon retired from the court room to deliberate upon its verdict, and the following occurred out of the presence and hearing of the jury.)

Mr. Hodges: Your Honor, we are withdrawing from the exhibits which will be given the jury, I am sure, all exhibits merely introduced for—not fully introduced, that is.

The Court: Those that were just marked for identification? (1143.)

Mr. Hodges: Yes, sir.

The Court: State what they were, for the record, so it will be fully in the record.

Mr. Vaden: If the Court please, we want the Clerk to pull the exhibits for identification, Exhibits 25, 32 and 31 to Sheeley, so that they will not be in the hands of the jury with the whole bunch of exhibits, when the whole bunch of exhibits are given to the jury.

The Court: All right, gentlemen, come around here on these special requests.

(The following occurred at the bench:)

The Court: As we agreed, you will now state the reasons for your exceptions to the Court's action on the

special requests tendered, those that were refused, I believe some seventeen in number.

Mr. Hal Gerber: I have got them all mixed up here. Let me put them—

The Court: These are in order.

Mr. Will Gerber: He has got the cases listed on his.

Mr. Hal Gerber: I have the authorities on my sheets (1144).

Mr. Will Gerber: —On his copies.

Mr. Hal Gerber: Just a second.

Mr. Will Gerber: —If you will let him straighten them out, if you will. He just wants to put those in order.

Mr. Hal Gerber: All right, Your Honor, sir, as to Number 1, which concerns the defendant's theory, we are relying on the case of Morgan against U. S., 230 F. 2d 904; Tatum against U. S., 190 F. 2d 612; and United States against Indian Trailer Corporation, reported in CCH, Section 9710, 1955, Volume 5.

We state we were entitled to a specific charge on our theory so far as the defendant is concerned, under the authorities.

(Said special request is as follows:) (1145.)

"Defendant's Special Request No. 1.

Refused—Boyd, J.

"The theory of the defendant is that he is not guilty of the charges in the indictment, and that the government has failed to prove his guilt beyond a reasonable doubt.

"That the investments made by him and his wife between the years 1949 and 195[illegible] were from cash accumulated by him and his wife prior to 1949, and possessed by them, but not considered by Mr. Norris in his computation. That he had no taxable income which was unreported at any time, and specifically for the indictment years; that all of his investments and his wife's investments and accumulations thereon were correctly and accurately reported and a tax paid thereon; that the income from his business was correctly and accurately reported and the proper tax paid;

that his business could not have produced the income claimed by the government, and that the decrease in taxable income for the years in question was the result of a declining business trend insofar as gross and net profits were concerned; that his books and records were adequate and could be verified, and his income tax liability established (1146) accurately; that there was no reason to resort to the net worth method to attempt to calculate his income; that he has shown by his books and records that this income could be accurately calculated and his tax thereon was paid; that he freely cooperated with the Internal Revenue agents and gave to them leads with which to verify the statements made in his affidavit; that the agents failed to investigate or attempt to verify such leads which if investigated would have supported the accuracy of his statements and affidavit; that he summarizes his financial history setting forth his cash accumulations as follows:

"That he had net savings and earnings from 1912 to 1924 the year he went in business of $63,500.00; that his total accumulations less all expenditures from 1924 to 1937, the year from which tax returns are available, were $111,000.00; that his total accumulations from prior savings and income reported by December 31, 1947 were $290,006.01; that he had net living expenses and net investments from January 1, 1937 to December 31, 1947 of $204,472.74; that therefore the total cash accumulation of the defendant and his wife on January 1, 1948 was $85,533.27; that in addition to this amount, net income was reported by J. P. Kirschner from 1937 to 1949 of (1147) $129,339.14 and income tax paid on this amount was $29,837.07 or a net amount of $99,502.07; that when the inventory adjustment of $16,721.10 is deducted from this amount, the balance of cash remaining from the Kirschner business is $82,780.97 and this amount when added to the $85,533.27 derived from sources other than Kirschner, gives a total cash accumulation available for investment on January 1, 1948, of $168,314.24; that the amount invested in 1948 was $38,458.40; that therefore, the amount of cash available for investment on January 1, 1949 was $129,855.84.

"If you believe the theory of the defendant as above stated or you have a reasonable doubt thereof or if you have a reasonable doubt as to the theory of the Government, it is your duty to acquit him."

Mr. Hal Gerber: As to Special Request Number 2, concerning these financial statements, we are relying on the case of Smith against United States, 348 U. S. 143, and Vloutis against U. S., 219 F. 2d 782.

(Said special request is as follows:) (1148.)

"Defendant's Special Request No. 2.

Refused—Boyd, J.

"There have been offered in evidence certain financial statements made for the Manhattan Bank and for Dun & Bradstreet, and an oral statement made by the defendant to the Revenue Agents. These statements concern the cash and other assets that the defendant had on hand January 1, 1949. These statements, oral and written, are called extra-judicial statements because they were not made under oath. Extra-judicial statements, such as these, must be corroborated by other independent, competent and creditable evidence before they can be considered by the jury in determining the guilt of the defendant. One extra-judicial statement cannot be used to corroborate another.

"I, therefore, charge you that unless you find by independent, competent and creditable proof othe- than the statements themselves, corroboration of the defendant's opening net worth, you cannot consider these statements as evidence of the guilt of the defendant.

"If you find such other independent, competent and creditable proof corroborating the statements, such proof, together with the statements and all the other (1149) evidence in the case, must satisfy you beyond a reasonable doubt that the government has proved to a reasonable degree of certainty the net worth of the defendant on January 1, 1949."

Mr. Hal Gerber: Number 3, that is the same two authorities as stated in Number 2.

(Said special request is as follows:)

"Defendant's Special Request No. 3.

Refused—Boyd, J.

"I charge you that if you find that the financial statements do not reflect all of the assets of Mr. and Mrs. Epstein, and are not substantially accurate, it is your duty to acquit the defendant."

Mr. Hal Gerber: Number 4, the same two authorities.

(Said special request is as follows:)

"Defendant's Special Request No. 4.

Refused—Boyd, J.

"There have been introduced in evidence certain (1150) financial statements made to the Manhattan Bank and to opening net worth or the total net assets of the defendant at the beginning of the indictment period, January 1, 1949. I charge that before you can accept these for any purpose, you must be satisfied beyond a reasonable doubt as to the substantial accuracy of these statements as reflecting all the assets of the defendant."

Mr. Hal Gerber: As to defendant's special request Number 5, we say that we were entitled to have it on the authority of Dupree against United States, 218 F. 2d 781, a Fifth Circuit case.

(Said special request is as follows:)

"Defendant's Special Request No. 5.

Refused—Boyd, J.

"I charge you that if the proof reflects that if the defendant has available at the beginning of the indictment period an amount of cash in the approximate sum of $85,000.00, which has been styled the Kirschner Funds, and such cash was not included in the opening net worth computation by the prosecution, the opening net worth

statement is not established with reasonable certainty and (1151) it is your duty to acquit him."

Mr. Hal Gerber: The Special Request Number 6 is with reference to the creation of the Kirschner business and it is our contention that it was not specifically and properly covered in the general charge, and therefore the defendant's special charge, in fairness to him, and to eliminate prejudice to him, should have been given.

Mr. Will Gerber: What is the authority?

Mr. Hal Gerber: We have no specific authority for it, just a reason.

(Said special request is as follows:)

"Defendant's Special Request No. 6.

Refused—Boyd, J.

"The prosecution has offered evidence to the effect that the Kirschner business was created to reduce the defendant's taxable income for a period prior to the indictment years. The defendant has offered evidence to the effect that this business was created upon advice of counsel and pursuant to state legislation. I charge you that you are not to consider this evidence for the purpose of determining the guilt of the defendant. It (1152) may be considered only for the purpose of determining whether or not the funds from this source were in the possession of the defendant on January 1, 1949."

Mr. Hal Gerber: As to Number 7, we cite Dupree against United States, the citation which has already been referred to, Dupree, 218 F. 2d 781.

(Said special request is as follows:)

"Defendant's Special Request No. 7.

Refused—Boyd, J.

"The defendant's proof reflects that he told the Revenue Agent that he had approximately $63,500.00 belonging to Mrs. Epstein on January 1, 1949. Unless the prosecution has proven beyond a reasonable doubt that this state-

ment was false, then the opening net worth statement is not substantially accurate and it is your duty to acquit him."

Mr. Hal Gerber: As to Number 8, we cite the Holland case, 248 U. S., page 121.

(Said special request is as follows:) (1153.)

"Defendant's Special Request No. 8.

Refused—Boyd, J.

"It is incumbent upon the Government to prove beyond a reasonable doubt that there were yearly increases in the defendant's taxable income, that such increases were not reported and that such increases were from a taxable source, and that this source was reasonably capable of producing the increases alleged."

Mr. Hal Gerber: As to Number 9, we cite both Holland and Dupree.

(Said special request is as follows:)

"Defendant's Special Request No. 9.

Refused—Boyd, J.

"I charge you that the burden is upon the government to prove beyond a reasonable doubt that the increases in net worth were the result of income from a taxable source; that is, the operation of the business between the years 1949 and 1952 inclusive, and unless you are satisfied beyond a reasonable doubt that the increases in net worth were attributable to this source you are to acquit the defendant." (1154).

Mr. Hal Gerber: Number 10—Holland.

(Said special request is as follows:)

"Defendant's Special Request No. 10.

Refused—Boyd, J.

"If you find from the evidence that Agent Norris was furnished leads, which if checked, would have shown the

non-taxable source of the defendant's income, and you further find that the agent failed to investigate the validity of these leads, you may consider these leads as true, and it would be your duty to acquit the defendant."

Mr. Hal Gerber: Number 11 is a more adequate, we say, statement of the law—more complete statement of the law as to adequacy. There is nothing in the Holland case that relieves the Government from proving inadequacy of books in connection with this prosecution.

(Said special request is as follows:)

"Defendant's Special Request No. 11.

Refused—Boyd, J.

"The witness Norris has testified that the books and records of the defendant were inadequate as a (1155) basis for determining income tax liability, and for that reason the government has sought to establish unreported, taxable income by the net-worth method.

"The question of whether or not the books were inadequate is a question of fact to be determined by you.

"Unless your find from all the evidence that the books and records were inadequate and that the defendant willfully failed to report his taxable income for the years involved in the indictment and pay a tax thereon, you are to acquit him."

Mr. Hal Gerber: As to Number 12, which relates to the bare assumptions and inferences upon which net worth rests, and goes into it in fairly much detail, we cite the authority of Costello against United States, 221 Federal 2nd, page 668.

(Said Special request is as follows:)

"Defendant's Special Request No. 12.

Refused—Boyd, J.

"The court has previously set forth the bare assumptions and inferences upon which the net worth case (1156) rests. You will note that it has been said that

these inferences may be drawn. That is not to suggest that you should draw the inference or that you should not draw it. It is for you alone to draw such inferences as you think the evidence rationally supports.

"The method involves the determination of the defendant's net worth at the beginning and end of a period. In this case, that net worth must be shown as of January 1, 949, January 1, 1950, January 1, 1951, January 1, 1952, and December 31, 1952. The Government undertakes to fix the starting point as of January 1, 1949, and its calculations of the defendant's unreported income are based on the assumption that the opening net worth accounts for all the resources of the defendant and his wife at that time, but it is for you to determine whether all the resources of the defendant and his wife, as of January 1, 1949, and in each of the prosecution years, have been in fact included in the government's opening net worth for each of these years. If you find that the evidence does not establish the fixed starting point with reasonable certainty, then all of the calculations based on that starting point would be in error. And if you find that such errors exist, the Court charges you (1157) that the Government has failed to prove an essential element of its theory and you should find the defendant not guilty."

Mr. Hal Gerber: As to Number 13, as to where or how the funds were received by the defendant, and how that constitutes, if at all, taxable income, we cite Holland.

(Said special request is as follows:)

"Special Request No. 13.

Refused—Boyd, J.

"In order for you to find that the sums received by the defendant during any of the taxable years substituted income to him, it is necessary that, in addition to showing increases in net worth, for the Government to also prove a taxable source for the acquisition of that income. It must further be shown that the taxable source was reasonably capable of producing sufficient income to justify the amount of the alleged increases. The Court further

charges you that in order to establish the inference that increases in net worth are attributable to taxable income, the Government (1158) must prove beyond a reasonable doubt that there were increases, and that the increases sprang from a taxable source capable of producing that income. If you find that there were increases in the defendant's net worth in this case and that these increases were allocated to a taxable period and there was further proof that there was a taxable source from which the increases were derived, you must also find that the source under all of the proof was capable of producing enough income to justify the allegations of these excessive amounts."

Mr. Hal Gerber: Number 14, is, I think—this is generally the same thing that the Court stated with reference to reasonable doubt.—

The Court: Do you withdraw that one?

Mr. Hal Gerber: Well, let me see. No, I am in error about that. It refers itself to the burden of proof, and we say that that was incorrectly and inadequately stated in the general charge.

Mr. Hodges: Got any case on that?

Mr. Hal Gerber: No, I don't have any case on it.

(Said special request is as follows:) (1159.).

"Special Request No. 14.

Refused—Boyd, J.

"You enter upon your investigation with the presumption that the defendant is not guilty of any crime and this stands as a witness for him until it is rebutted and overturned by competent and credible proof. It is, therefore, incumbent upon the Government, before you can convict the defendant, to establish his guilt to your satisfaction beyond a reasonable doubt. In this connection, the burden of proof is on the Government throughout the trial. The burden of proof never shifts to the defendant. It is not incumbent upon the defendant to prove his innocence, but it is essential that the Government prove his guilt and the Government must prove every element of the.

offense beyond a reasonable doubt though not to a mathematical certainty. If you find that the Government did not establish opening net worth to a reasonable degree of certainty, then the Court charges you that the Government failed to carry the burden of proof and you must find the defendant not guilty." (1160).

Mr. Hal Gerber: As to Number 15, with reference to the question of how the inferences are to be drawn, and as to willfulness; and as to fraud, as to attempts, and so forth, we cite Legatos against United States, 222 Federal 2nd, 678. I think you will find that in the foot note.

(Said special request is as follows:)

"Defendant's Special Request No. 15.

Refused—Boyd, J.

"It is recognized that no uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer shall adopt such forms and systems of accounting as are in his judgment best suited to his purpose. Each taxpayer is required by law to make a return of his true income. He must, therefore, maintain such accounting records as will enable him to do so.

"It is not enough for the Government to establish its case by proving either by direct evidence or by inference that net worth increases are attributable to taxable income. It must go further and prove willfulness; that is, that the crime was committed by the defendant with the willful intent to defraud the Government. Willfulness involves the specific intent (1161) which must be proved by independent evidence and cannot itself be inferred from the mere understatement of income. One of the essential elements of the proof to evade income tax or the payment thereof is the knowledge on the part of the taxpayer of the existence of the obligation; that is, of a tax due and the specific wrongful intent to evade the payment thereof. If you find from all of the evidence that the defendant did not have actual knowledge of the existence of an obligation on his part to pay any income tax in addition to the income tax reported by him in his original income tax

returns and that the defendant did not have speciifc wrongful intent to evade such obligation, then should find the defendant not guilty.

"If you find that the books and records of the defendant appear correct on their face, the Court charges you that increases in net worth standing alone do not justify an inference of willfulness.

"Fraud is an actual intentional wrongdoing and the intent required is a specific mental determination or purpose to evade a tax known or believed to be owing. Before you can convict the defendant, you must find from (1162) the evidence beyond a reasonable doubt that any income tax involved in this indictment was not only false and fraudulent, but that by such false and fraudulent return the defendant committed an actual intentional wrongdoing and the filing of the said return was with the intent on his part to evade a tax owing to the U. S., and unless you so find, you must return a verdict of not guilty."

Mr. Hal Gerber: I think Your Honor gave Number 16, so we won't refer to that. That is on charts. What I have is a little bit differently stated, but I believe we can withdraw that, because I think it was covered in different language, but practically the same way.

And I think reasonable doubt—I think reasonable doubt was stated pretty much the same as we have it, so we will withdraw 18.

And that is all.

The Court: All right (1163).

(Jury Verdict of Guilty.)

The Court: All right, is that the verdict of all of you gentlemen of the jury, so say you all?

Jurors: Correct.

The Court: Do you want the jury polled?

Mr. Will Gerber: No, no.

The Court: All right, thank you very much, gentlemen, for your services, and you are excused until further notice.

(Jury excused.)

The Court: Give me the file, Mr. Clerk. Let the defendant come around.

(The defendant faces the Court.)

The Court: All right, Mr. Gerber, the Court proposes to pass sentence in this case at this time. Would you care to comment about it?

Mr. Will Gerber: I think Your Honor has heard the case and it is fresh in Your Honor's mind. You know all the facts. You know them better than I do. I see no comment to make (1164). I can only say that we don't think that the evidence in this case justifies this verdict.

The Court: Mr. Epstein, would you care to comment about it?

The Defendant: No, sir.

The Court: Mr. Epstein, after a fair and impartial trial, the jury has found you guilty on all four counts of the indictment, and it now becomes the duty of the Court to pass sentence.

And accordingly it is the judgment of the Court that you be sentenced to the custody of the Attorney General for a period of five years on each count of the indictment, the sentences to run concurrently. That you pay a fine of five thousand dollars on the first count of the indictment, five thousand dollars on the second count of the indictment, seventy-five hundred dollar fine on the third count of the indictment, and seventy-five hundred dollar fine on the fourth count of the indictment. Fines totalling twenty-five thousand dollars, in other words, are assessed in this case, and (1165) they are committed fines. In other words, for non-payment of those fines the defendant will be further detained until he is otherwise lawfully released.

The Court requires that the fines totalling twenty-five hundred dollars be secured, either by payment of the fine into the Court to be held in escrow, or by the execution of a proper bond.

I say, the fines are to be secured to stay any execution, and those bonds must be made by twelve o'clock tomorrow.

Mr. Will Gerber: Your Honor can't give us any more time than that?

The Court: Well, yes, sir. Will he experience trouble in making that kind of bond?

Mr. Will Gerber: I don't know, if Your Honor please. I think you and everybody else have got this man very highly over-rated, if Your Honor please.

Mr. Vaden: Your Honor mentioned the word "twenty-five hundred dollar bond." You meant—

The Court: Twenty-five thousand dollar total bonds.

Mr. Vaden: Yes (1166)

The Court: And we will say Friday, then.

Mr. Will Gerber: That will be all right.

The Court: Friday of this week.

Mr. Will Gerber: Friday will be all right.

The Court: Friday of this week. And appearance bond is five thousand dollars. How much is it now?

The Clerk: A thousand dollars.

Mr. Fitzhugh: Now a thousand, may it please Your Honor.

The Court. And the hour is a little late now, and I take it he can make that by twelve o'clock tomorrow.

Mr. Will Gerber: That will be all right.

The Court: Twelve o'clock tomorrow.

Mr. Will Gerber: It will be all right.

The Court: Adjourn it—

Mr. Vaden: Did Your Honor dispose of the costs?

The Court: And costs under the statute go along with the conviction—yes, that is part of it.

Mr. Vaden: Will Your Honor set cost bond in the amount of twenty-five hundred dollars to (1167) secure payment of the costs?

The Court: What will the costs be?

Mr. Vaden: I imagine somewhere around a couple of thousand dollars. It may not be that much.

The Court: Well, is that in connection with the stay bond? The costs will have to be secured, too, yes.

Mr. Vaden: About two thousand dollars, if it will be any—

The Court: Or would that require a separate bond? I don't believe it does.

Mr. Vaden: Your Honor usually does.

The Court: Well, all right, twenty-five hundred dollars, then, to secure the costs, the payment of the costs.

Adjourn it, Mr. Clerk, until nine-thirty tomorrow morning.

(Adjournment.) (1168.)

I hereby certify that the foregoing 1168 pages, to the best of my knowledge, skill and ability, is a true and correct transcript of my shorthand notes of open court proceedings relating to the evidence introduced and charge of the Court to the jury, in the case of

United States of America

vs.

William Epstein,

Number 8394 Criminal.

This 2nd day of October, 1956.

/s/ Miriam Till,

Official Court Reporter, United States District Court, Western District of Tennessee (1169).

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

WILLIAM EPSTEIN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION

APPENDIX TO APPELLEE'S BRIEF

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MAR 11 1957
CARL W. REUSS, Clerk

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APPENDIX TO APPELLEE'S BRIEF

TRANSCRIPT OF THE EVIDENCE*

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

UNITED STATES OF AMERICA

vs. Number 8394 Criminal

WILLIAM EPSTEIN

PROCEEDINGS

* * * * *

TESTIMONY OF H. A. SHELEY

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

11 MR. VADEN: We have got it here now. Now, I would like to get those marked, the oldest one first, —1, 2, 3, 4, — whatever it is, — 1, 2, 3, 4, 5, — the series.

(Said tax returns of defendant for the year 1949 through 1952, including 1951 Amended, were accordingly marked as Exhibits 1 through 5 to the testimony of Mr. Sheley.)

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* Numbers appearing in outer edge of text indicate page numbers of original stenographic transcript of testimony.

12 Q. All right, now, I will ask you to look at each one of them up at the top, and just read the name and address on them, so that the jury will see the name and address, and tell us whether or not they are joint returns of William and Pearl Epstein, I believe it is, — is that right?

A. That is right, William and Pearl Epstein.

Q. What is the address used on same?

A. 162-164 Beale Avenue.

* * * * *

13 MR. VADEN: Those have been marked. And I believe counsel will agree they are correct.

MR. WILL GERBER: We have no objection to those, and they can be in now.

* * * * *

14 Q. All right, you have handed me personal and individual income tax returns, William Epstein, 166 Beale, for the year 1940; personal return of William Epstein, 166 Beale, for the year 1941; individual return William Epstein, 166 Beale, for the year 1942; William Epstein for '43; William Epstein for '45; Pearl Epstein for '46; William Epstein for '46; Pearl Epstein for '47; William Epstein for '47; William and Pearl Epstein for '48.

I would like to have those marked the next numbers, please.

15 (Said documents were accordingly marked Exhibits 6 through 15, respectively, to the testimony of Mr. Sheley.)

MR. VADEN: All right, I will put a band around them and try to keep them separated.

Q. Now, Mr. Sheley, we have requested, and I will ask

you whether or not you have there an official statement over Mr. Rountree's signature of the taxes paid by William or Pearl Epstein during these indictment years and any prior years thereto?

A. Yes, sir.

Q. Do you have that there certified by Mr. Rountree?

A. Yes, sir.

Q. May I see that, please, so counsel can look at it?

A. In triplicate.

* * * * *

16 (Said document was accordingly marked as Exhibit 16 to the testimony of Mr. Sheley.)

MR. VADEN: One in the name of Pearl Epstein, next number.

(Said document was accordingly marked as Exhibit 17 to the testimony of Mr. Sheley.)

MR. VADEN: And one referring to the file of William and Pearl on the joint return, — next number.

(Said document was accordingly marked as Exhibit 18 to the testimony of Mr. Sheley.)

* * * * *

17 MR. VADEN: You have handed me some returns, income tax returns beginning in '45, J. P. Kirschner, 162 Beale, being some individual income tax returns, one for '46, one for '47, one for '48, and one for '49. All same name, same address.

I would like to get these marked the respective numbers, — next numbers.

(Said tax returns for the years 1945 thrugh 1949 were accordingly marked as Exhibits 19 - 23 to the testimony of Mr. Sheley.)

18 Q. I will ask you whether or not Mr. Rountree certified and you brought with you a Form 899 showing certificate of assessments and payments of J. P. Kirschner here in Memphis, Tennessee? The only address I have is 162-166 Beale?

A. Yes, sir.

• • • • •

20 Q. I have copies of these information returns. Now, we might inquire about another business you have there, I am sure. We want to know whether you had with you some partnership returns having to do with Park
21 Avenue Restaurant, — it is a restaurant here in Memphis, — for the fiscal years '47, '48, '49. Do you have those with you?

• • • • •

MR. VADEN: I would like these marked the next three numbers.

(Said tax returns for fiscal years ending October 31, 1947, 1948 and 1949, were accordingly marked as Exhibits 27 - 29 to the testimony of Mr. Sheley.)

• • • • •

22 Q. I believe you call that a Form 942, is that right?

A. That is right, household help.

Q. Household help. I will ask you whether or not you have produced here any forms taken off the rolls showing any salaries paid for domestic help, household help, for the years '51 and '52?

A. Yes, sir, I have.

23 Q. May I see those, please?

(Documents examined by counsel.)

• • • • •

(Said documents were accordingly marked as Collective Exhibit 30 to the testimony of Mr. Sheley.)

Q. This appears to be some returns filed and signed by Mrs. William Epstein to show the payment of wages to certain domestic help at the residence at 661 East Drive, now, — for the year '51 and '52. It shows on the face the tax was three per cent. That is the customary payment or percentage that you paid into Social Security, is that right?

A. That is right, yes, sir.

24 Q. I have asked you to go over these matters and save us some time and make some calculations. Going by the tax that has been paid here, have you added it all up and applied the three percent formula to it?

A. Yes, sir, I have.

Q. In the year '51, on the tax we have here, this Social Security, how much was paid for domestic servants?

A. Two thousand six hundred fifty-two dollars.

Q. Two thousand six hundred fifty-two dollars?

A. Yes, sir.

Q. Did you make a calculation as to how much was paid for domestic servants in 1952 by the tax paid?

A. Yes, sir, I have. Two thousand, seven hundred fifty-nine dollars.

. . . . . .

TESTIMONY OF WALLACE C. SUMMERS

DIRECT EXAMINATION
BY MR. VADEN:

. . . . . .

35 Q. Yes. And in addition, I will ask you whether or not you had occasion to prepare other returns, '45, '46, '47, and '48?

A. I think I began about '45.

MR. VADEN: Yes.

A. (Continuing) — If I am correct there.

Q. Both for William Epstein and I think one that is here for Pearl Epstein, all individual returns. Do you remember that?

A. Yes, I think —.

Q. Better look at those and see.

Yes. Now, Mr. Summers, did you keep the books for Mr. Epstein, or how did you go about making out this report?

A. I got it strictly from information that was furnished me by Mrs. Epstein or Mr. Epstein.

Q. Yes. And each year you would make out the returns as I am holding here in my hands or as you have there?

A. Yes, sir.

Q. —Fix it up, they would sign it like all taxpayers do?

A. That is right.

Q. And it would go in to the Government. And did you conduct—, Homer K. Jones, I know, — and you do yourself I am quite sure conduct audits, — some people have their affairs audited each year, — did you conduct an audit of the Epstein affairs?

A. No, sir.

Q. You did not. And from information you say you got from Mrs. Epstein or Mr. Epstein, did you make a verification of it?

A. No verification in any way.

Q. No verification in any way. And whatever they told you, you put down on the return and fixed it up orderly?

A. That is right.

Q. — The way it is supposed to go in, and it was filed?

A. That is correct.

• • • • •

Q. Now, so that we know—, so that we know how those things happened, — and the jury is going to see these things there, — there is one place for you to put your name
37 over at the left; is that the person who prepares the return?

A. Yes, sir, I think that was the way. I know it is that way now, — I think that way all the way through.

Q. Well, you will notice there on the right the taxpayer and his wife signed over in the corner, that is true, isn't it?

A. Yes, sir.

Q. Now, so far as Kirschner is concerned, will you tell us—, he also has four or five returns there, — whether or not the same information—, or how you got the information on preparing the Kirschner returns?

A. Furnished by Mrs. Epstein.

Q. Yes. Did you ever see Mr. Kirschner along in there in and about the business on Beale Street?

A. Oh, I saw him once in a while, yes.

Q. Once in a while. And the returns themselves, if I understand it, then, you did not get the information from Mr. Kirschner?

A. No, sir, Mrs. Epstein.

Q. Yes. Now, that was done here in—, your income tax returns were prepared here in Memphis, Shelby County, Tennessee, in the Western District of Tennessee?

A. Yes, sir.

Q. The ones you have in your handwriting there?

38 A. Yes, sir.

Q. Now, Mr. Summers, going into the matter a little further, what sort of a book proposition did they have down there? You say you did not audit the books or anything. Do you know what sort of bookkeeping system they had?

A. Well, they had a little book, more on a memorandum form, that they accumulated the stuff from month to month. That was for the store.

• • • • •

Q. And do you know whether or not you made any—, you had any conversations with Mr. Epstein about some audit of his books, or whether or not it was necessary?

A. I told him that I thought maybe there should be a better system there.

MR. VADEN: Yes, sir.

39 A. (Continuing) —But I did not know whether it would be kept up or not, and I never did insist on it. I have found out if the thing is not kept up, it gets in worse shape than if you have got it on memorandum.

Q. And how many times did you talk to him about those records?

A. Oh, I don't know, sir, several times.

• • • • •

42 Q. Now, getting back to this proposition of keeping books down there, you stated that you did advise him to keep more accurate books and records?

A. Well, I suggested it.

Q. And, as a matter of fact, you talked to him several times about it, didn't you, as you say?

A. Two or three times, I don't recall.

Q. Well, what did he usually say when you talked to him about it, — Mr. Epstein?

A. I don't know. There was no definite conclusion made about it. It was just left from time to time.

Q. When you went back the next year it would be about the same thing?

A. Yes, sir.

Q. And I will ask you whether or not you didn't offer
43 to get Homer K. Jones and Company, or the company to set up a good set of books if he wanted to do it?

A. I believe we did suggest that.

• • • • • •

Q. So far as the books, as you say, the books that were at his concern, — in the first place, there wasn't any partnership books you could make any sort of balance sheet for him, is that right?

A. We couldn't make a balance sheet for him, no, sir.

Q. Did you have any other books you could make a
44 balance sheet off of, as far as you know?

A. No, sir.

• • • • •

REDIRECT EXAMINATION
BY MR. VADEN:

• • • • •

53 Q. The question about these books that we have spoken of here, — or here, — and this, — all underneath
54 here, — these books that you spoke of here that the jury has seen, this is the sales and expenses you are talking about, is that right?

A. That is right, it is sales, expenses, and a breakdown of expenses.

MR. VADEN: Yes.

A. (Continuing) And analysis.

Q. No way they can be verified just by looking at them, is there?

A. No, you would have to go back and look at the cancelled checks and stuff like that, which I did not do.

Q. That is right, cash and everything else is in here, isn't it, — cash, checks, and everything, — you just took the totals at the end of the books?

A. That is right.

* * * * *

TESTIMONY OF CAMERON D. HUDDLESTON

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

63 Q. At the same time. But generally speaking, did you put in much or little time on the Epstein matter before you were transferred?

A. Well, that—, 1 would say that I put in a lot of time on it.

* * * * *

69 Q. Did you work on that feature of the case?

70 A. Yes, sir, I did.

Q. And did you work out the starting point on a net worth method case?

A. Yes, I worked it for several years.

Q. Now, in addition to the books showing expenses, as you stated, and sales, — that is, the income sales, this Mr. Epstein, I think it has been testified to here, was in the pawn broker business, is that right?

A. Yes, sir.

Q. How was the business connected—, I have some

returns here of Mr. J. P. Kirschner. Did you work on that feature of the case, too, the store?

A. I got Mr. Kirschner's returns out of Nashville for I believe '47, '48 and '49.

MR. VADEN: Yes.

A. (Continuing) And I looked at them, but I was not able to get any records to check against those returns, so there was not much I could do on that. Mr. Kirschner was dead.

Q. Well, '50, '51, '52, — how was the store being conducted at the time when those returns were filed?

A. Well, during those years it was operated by Mr. Epstein, and it was a part of his return. The figures on that store were reflected on his pawn brokerage business. It was just an integral part of the whole.

• • • • •

71 Q. And did he pay everything by check, or some cash and some checks paid out?

A. Most of his expenses were paid by cash.

72 Q. Umhum. And was there some system of verifying these cash payments or just put them on the book?

A. I knew of nothing to go behind what was on the book. I knew of no way.

Q. Umhum. Do you know who kept the books up to the year 1949? Did you have any conversation with Mr. Epstein about that?

• • • • •

A. He said he kept them himself prior to January 1, 1949. However, I did not see any books for that period of —

MR. WILL GERBER: For what period?

A. Prior to January 1, 1949.

• • • • •

76 Q. Now, why couldn't you tell how much of that was checks and how much cash?

A. Well, that four hundred dollars was the only figure that was reflected on his books.

• • • • •

77 Q. Did the books show who had paid the money in?

A. No.

Q. So, coming on up to the proposition, you say you determined to try to compute this income by the net worth method. Were you ever able in your computations over the period you worked able to verify, outside of seeing — your seeing the word four hundred dollars on the receipts, we will say, for some day, — were you ever able to verify that as being the correct receipts for that day?

A. No.

• • • • •

78 Q. I will ask you whether or not one of the things in the net worth—, you say you figured the net worth, at least certainly started on the net worth theory here, — one of the things you figure in net worth, among the other things, is increase in net worth, — but if you don't also figure money spent for living expenses and other moneys that are expended by the taxpayer during the years in question to see how much money he came into possession of, — you have to figure the personal expenditures, and I ask you whether or not you did it in this case?

A. Yes, sir.

Q. I will ask you whether or not Mr. Epstein furnished you any records for that purpose, any cancelled checks, and whether or not you went through them?

79 A. Yes, he furnished me he and his wife's personal cancelled checks.

Q. And from that, did you arrive at some calculations about his living expenses to use in your net worth calculations?

A. Yes, sir, I did.

Q. Do you know whether or not—, and I don't remember myself, -- did that include life insurance payments and matters of that kind?

A. The figures that I worked up did include life insurance premiums.

Q. Yes. The reason I was asking you that, when you say he did furnish you the checks, did you have occasion to actually go over them with Mr. Epstein to see whether or not it was business or personal? That is what I mean.

A. I picked out certain checks that there was doubt in my mind about and asked him about them. I don't know just how many, but there would be several each year that I did ask him about, because I was uncertain about the purpose of the payment, and it could have been from most anything.

Q. That is right. Well, now, when you came to that point, and after you came to that point, will you tell us whether or not you found these personal expenditures to be relatively large or small?

• • • • •

80 A. Well, according to my standard of living, they were high. According to some people's, low.

• • • • •

CROSS-EXAMINATION
BY MR. WILL GERBER:

• • • • •

99 A. I feel that the figures on the books are not correct. That is all I can say.

• • • • •

TESTIMONY OF E. T. PROCTOR

DIRECT EXAMINATION
BY MR. FITZHUGH:

* * * * *

107 Q. E. T. Proctor?

A. E. T. Proctor.

Q. Proctor.

A. I am General Agent for Northwestern Mutual Life Insurance Company of Tennessee.

* * * * *

108 Q. Have you brought with you records showing payments to the company of premiums on certain policies of insurance from 1948 through 1952?

A. Yes, sir, I have.

Q. Will you tell his Honor and the jury what premiums were paid during those years?

A. There are two five thousand dollar policies, and the annual premium on them was $136.20.

Q. Is that on each policy?

A. That is on each policy.

MR. FITZHUGH: Yes.

109 A. (Continuing) The premiums were due each year on the 26th of October, and I checked and found that all of them were paid within the grace period.

Q. From '48 through —?

A. '48 through '52.

* * * * *

TESTIMONY OF LLOYD C. McCUISTON, JR.

DIRECT EXAMINATION
BY MR. HODGES:

* * * * *

114 Q. You are the Clerk of the County Court of Crittenden County, Arkansas?

A. Circuit and Chancery Court.

• • • • •

Q. Mr. McCuiston, you were subpoenaed to bring certain records with you. Do you have them there?

A. Yes, sir.

• • • • •

116 (Said photostatic copies of documents were accordingly marked as Exhibits 1 through 8, respectively,
117 to the testimony of Mr. McCuiston.)

• • • • •

Q. Mr. McCuiston, I believe you have a warranty deed and trust deed that relate to 2.56 acres of land located in Crittenden County, Arkansas, acquired in 1946 by William Epstein. Just take a look there—.

A. Let's see the originals there, the exhibits.

• • • • •

A. I have one here '47, the West twenty acres of the South Half of the Northwest Quarter of the Southwest Quarter of Section Thirty-One, Township Six North,
118 Range Eight East.

Q. How many acres were in that tract, now?

A. West twenty acres.

Q. All right. That is twenty acres acquired in '47 by William Epstein.

A. The deed record shows from Ella Jackson Smith, W. M. Smith, et al., to Pearl Epstein.

• • • • •

Q. What else?

A. On that tract of land I saw quit claim deed from St. Francis Levee District.

Q. Do you have the warranty deed there?

119 A. I haven't looked there.

Q. That is the reason I am asking, to be absolutely sure, on the tract of land acquired by William Epstein with H. H. Jeter in '49, — this land was subsequently sold to a W. S. Cockerham and wife, and a mortgage being retained by Epstein and Jeter?

A. Yes, sir, Book 208, Page 359, George Randolph, et al., to William Epstein and H. H. Jeter.

Q. All right, how much land, — what was that tract, —how large a tract is that?

A. Well, there are land lines drawn, but reading it over, I don't believe the acreage shows.

Q. Well, that is all right, then. Just don't bother. Now, with respect to that twenty acre tract of land that you previously mentioned, being property deeded Pearl Epstein in '47 in Crittenden County, Arkansas, I believe your records show, do they not, that that land was retained by Pearl Epstein, and was sold by her on March 7, 1956?

A. Yes, sir.

. . . . . .

TESTIMONY OF MRS. RAY SIMERSON

DIRECT EXAMINATION
BY MR. FITZHUGH:

. . . . . .

121 Q. Yes. Ray Simerson. And you are financial secretary of Berclair Baptist Church, is that correct?

A. Yes, sir.

Q. I will ask you whether or not in 1950 your records show that William Epstein, the defendant here, purchased a one hundred dollar bond in the Berclair Baptist Church, is that correct?

A. Yes, sir.
Q. And he paid for it, did he?
A. Yes, sir.
Q. Paid one hundred dollars?
A. Yes, sir.

• • • • •

TESTIMONY OF A. R. DAVIS

DIRECT EXAMINATION
BY MR. VADEN:

• • • • • •

128 MR. VADEN: You have handed me a photostat of William Epstein's signature card at your bank dated February 2nd, 1934, the two, — front and back.

I would like to have that marked 1 to Davis.

• • • • •

Q. Do you have some photostats on other accounts?
A. Yes, sir.
Q. Let's see those.
A. You want all of them?

MR. VADEN: Yes, sir.

129 Thank you, Mr. Jones.

Yes, sir, you have handed me one Epstein's Store, — here you are, Mr. Jones, — I believe that is June 2, 1940.

I would like that marked the next number.

(Said photostatic copy of signature card was accordingly marked as Exhibit 2 to the testimony of Mr. Davis.)

MR. VADEN: One on Mrs. William Epstein, I would like to have marked the next number.

• • • • •

MR. VADEN: I have another one, Kirschner's Store, by Mrs. Pearl Epstein.

(Said photostatic copy of signature card was accordingly marked as Exhibit 4 to the testimony of Mr. Davis.)

MR. VADEN: Let's see the original there. All right. Had to write that a little clearer. You hand me here another one, Kirschner's Store by Abe Kriger,
130 Authorized for endorsements only, By Mrs. Pearl Epstein.

(Said photostatic copy of signature card was accordingly marked as Exhibit 5 to the testimony of Mr. Davis.)

* * * * *

Q. Now, we have some four or five cards. Is that all the signature cards you have down there relative to William Epstein, Pearl Epstein, Kirschner's Store, signatures as far as any accounts in your bank?

A. I have a signature on the safety deposit box.

Q. You have a signature on the safety deposit box?

A. Yes, sir.

Q. Let's see that, please.

MR. WILL GERBER: No objection.

MR. VADEN: You have handed me photostats of signature card of your box number E 190 with a good many signatures, in two parts, with a good many signatures of Mr. and Mrs. William Epstein.

I would like to get it marked the next number.
131 (Said photostatic copy of signature card was accordingly marked as Exhibit 6 to the testimony of Mr. Davis.)

* * * * *

Q. Now, Mr. Davis, as far as the William Epstein account is concerned, I would like to ask whether or not you have the originals or copies of ledger sheets and deposit tickets in the bank of William Epstein at the Manhattan for the years '49 through '52?

A. Yes, sir.

Q. May I see those, please?

* * * * *

134 MR. VADEN: So, if Your Honor please, I offer in evidence for the years '49, '50, '51, and up and through November 29th, '52, collective exhibit the next number to Davis, of the William Epstein deposits in that account at the Manhattan Bank, ledger sheets and photostats of deposit slips.

* * * * *

(Said photostatic copies of documents were accordingly marked as Collective Exhibit 7 to the testimony of Mr. Davis.)

* * * * *

136 Q. Now, I will ask you whether or not you have photostats of the William Epstein account, similar, same account, in your bank for the years '47 and '48?

A. On which account is that?

MR. VADEN: William Epstein.

A. That is William Epstein, of '48.

Q. '47 and '48.

A. Yes, sir.

Q. As far as you know, are there any deficiencies on these?

A. No, sir.

Q. All there?

A. As far as I know.

Q. All right, you did not find any missing?

A. No, sir.

* * * * *

138 (Said photostatic copies of documents for 1947 and 1948 were accordingly marked as Collective Exhibit 8 to the testimony of Mr. Davis.)

Q. This small bunch, now, Mr. Davis, we have subpoenaed—, and I will ask you whether or not you have brought with you photostats of ledger sheets and deposit tickets showing the account which you have signature cards on, Mrs. William Epstein, for the years '49 through '52?

A. '49 through '52?

MR. VADEN: Yes, sir.

139 A. Yes, sir, I have.

* * * * *

(Said photostatic copies of documents were accordly marked as Collective Exhibits 9 and 10 to the testimony of Mr. Davis.)

* * * * *

140 Q. Now, Mr. Davis, I will ask you whether or not you also have with you the ledger sheets and deposit tickets or photostats of Mrs. Epstein's bank account for the years 1947 and 1948?

Are these all here, as far as you know?

A. As far as I know.

* * * * *

141 (Said photostatic copies of documents were accordingly marked as Collective Exhibit 11 to the testimony of Mr. Davis.)

142 Q. Now, I will ask you whether in response to subpoena you have produced and have with you some ledger sheets and deposit tickets on an account you have,

or did have, or may still have, at the Manhattan, which is in the name of Epstein's Store?

A. Yes, I have deposit tickets.

Q. Let's see those. I believe that account was possibly opened in 1951. You have a date there on it?

A. This is from January 8, '51, through November, '52.

Q. From January 8, '51, through the month of November, '52?

A. Yes, sir.

Q. And December is missing on that one?

A. Yes, it is.

Q. As a matter of fact, it shows the account was opened on January 8, '51, doesn't it?

A. Yes, sir.

• • • • •

143 THE COURT: Same ruling. Let them in.

(Said photostatic copies of documents were accordingly marked as Collective Exhibit 12 to the testimony of Mr. Davis.)

Q. Now, Mr. Davis, I will ask you whether or not you have with you and have brought here under subpoena photostats of the records of the Kirschner Store down at the Manhattan Bank beginning with the year 1945?

A. I have '47.

Q. '47?

A. 1947. It starts February 28, '47.

Q. And ends with—?

A. It goes to June 30th, '49.

• • • • •

146 Q. I ask you whether or not you produced with you photostats of the records showing any loans made by

the Manhattan Branch of Union Planters to Mr. or Mrs. William Epstein during the years '49 through 1952?

A. Yes, sir, I did. This is photostats.

(Documents examined by counsel.)

• • • • • •

Q. You have a whole set of what you call liability sheets?

147 A. Yes, sir.

Q. You have made that on the whole ledger?

A. Yes, sir.

Q. Beginning with 1934, really runs through May, '54, but it has '52 on one of the sheets?

A. Yes, sir.

• • • • • •

(Said photostatic copies of documents were accordingly marked as Collective Exhibit 14 to the testimony of Mr. Davis.)

• • • • • •

Q. Now, to save us all some work, I think it is possible, we asked you to have someone total this up for us

148 on this total amount of money borrowed. Do you have that?

A. On this other sheet—, this is '51 and '52, — let's see how we have got it totalled.

Q. You can call it by years, if you have it there. Of course it can be verified.

MR. WILL GERBER: What years is that, '50, — '51?

MR. VADEN: Yes, sir.

A. '51, it shows eleven thousand dollars.

MR. VADEN: Yes.

A. (Continuing) And also six thousand in '51.

Q. That is '51 also?

A. Yes, sir. And ten thousand in '51.

Q. '51 also?

A. Yes, sir. Did you say '47?

Q. '47, yes, if you have got it.

A. Fifteen thousand in '47.

MR. VADEN: Yes.

A. (Continuing) And fifteen thousand in '48?

MR. VADEN: Yes, sir.

A. (Continuing) Thirty-two thousand in '49.

MR. VADEN: All right.

A. (Continuing) Five thousand in '50.

MR. VADEN: Yes.

149 A. (Continuing) And another fifteen thousand in '51.

* * * * *

Q. Raise your voice and repeat the list there, please, sir.

A. '47, fifteen thousand; '48, fifteen thousand; '49, thirty-two thousand; '50, five thousand; '51, fifteen thousand.

* * * * *

151 Q. Now, do you have with you some figures relative to interest received by the Manhattan Bank as payment on these loans?

A. Yes, sir, I have a tape here with interest on it.

Q. Yes, sir. What does that show?

A. '47, it shows $1,049.86.

Q. How much in '48?

A. $881.84.

Q. And '50?

A. $515.23.

Q. '51?

A. Two separate totals, 330 and 990.

Q. Somewhere around thirteen or fourteen. What others?

A. '52, 440 and $1,686.68.

152 MR. HAL GERBER: What was that last?

Q. Have you got a grand total on the interest for those?

A. $1,688.68 in '52. Yes, I can add the total for you.

Q. You don't have it added up there?

A. The way he has got the total here, $6,702.09, according to this list.

Q. Sixty —

A. $6,702.09.

* * * * *

Q. Yes, sir. You have—, and I have here the photostats. Do you have it? I will ask you to look with me, if you will, for the ledger sheet prior to the year 1947, so that you can give us some idea about what loans were being made by Mr. Epstein at your bank. Do you have one

153 there in 1946? Can you tell by looking at that the renewals and the new loans?

A. No, sir, I don't know enough about them. I have got one here '46 of twenty-five thousand.

* * * * *

154 MR. VADEN: If the Court please, at this time I am offering for introduction a photostat of the collateral section or department of the Union Planters dated August 2, '51, relative to the holding of a loan or collateral on a loan of William Epstein of some United States Treasury coupon bonds and Investors Syndi-

cate investment certificate, total amount of par value on those two collaterals of ten thousand dollars.

* * * * * *

155 MR. VADEN: Also offering additional collateral records, photostats, of Union Planters, loans of William Epstein, dated February 25, 1947, Treasury bonds, two different series, in the amount of five thousand dollars each. And on the same photostat the additional loan record March 17, '48, of collateral there, two Treasury bonds in the total amount of ten thousand dollars, loans in each instance being made to William Epstein.

* * * * * *

MR. VADEN: Also offering photostats of the collateral department section at Union Planters, loan of William Epstein dated June 15, '48, where he put up two Treasury bonds, two per cent bonds, in the amount of one thousand dollars each on the loan, and loan of
156 William Epstein April 1, '46, that same bank, where he put up twenty thousand dollars United States Treasury bonds as security.

* * * * * *

Q. Now, Mr. Davis, in addition to these records, Mr. Davis, I will ask you to look at your original direct liability sheets and ask you to look there on a loan made on October 16, '51, to William Epstein, — this long sheet like I am looking at here, please.

* * * * * *

A. Well, let's see, maybe I am on the wrong sheet. Yes, sir, I have that.

Q. What was the rate of interest on that loan, please, sir?

A. Three percent.

157 Q. And how much was the loan, please, sir?

A. Twenty thousand dollars.

Q. And how much does your record—, what does your record show was put up as security right under there, — anything there?

A. It says collateral was pledged.

Q. On October 16, '51, the one under that.

A. October —, same thing under that, too.

* * * * *

Q. On loan October 16, '51, your loan number 1492.

A. I see now. Thirty-two thousand, United States Treasury bonds.

Q. That is the collateral?

A. Thirty-two thousand, U. S. Treasury.

* * * * *

158 Q. The loan number 1734, October 31, — if you will look, — do you see that there?

A. Yes, sir.

Q. Do you see a five thousand dollar loan there?

A. Yes, sir.

Q. Fifteen days later?

A. Yes, sir.

Q. What does it show that security was?

A. Five thousand U. S. Treasury two and one-half per cent bonds.

Q. Yes. Is that a three per cent loan?

A. Yes, sir.

Q. I ask you to look at loan 1919, — one right there, August 13, '51, — I mean, November 13, '51.

A. Ten thousand dollars, assignment of life insurance.

* * * * *

160 Q. In 1949, your loan number 3943, on September 26, — if you will, please find that sheet?

A. I have it, — says thirty-two thousand dollars U. S. Treasury bonds.

Q. How much was the loan?

A. Ten thousand.

* * * * *

Q. Right under that, it shows another loan on October 4th, about a week later. How much was that?

A. Five thousand.

Q. What does it read right under that?

A. It says collateral securing note for ten thousand.

* * * * *

161 Q. What is the biggest balance he owed in the year '49?

A. September 6th —, September 16th, forty-two thousand.

MR. VADEN: I see.

A. (Continuing) September 27th, either one, forty-two thousand.

Q. Yes. Yes. In the year '51, the next sheet, along in August, October, November, — what is the biggest balance he owed?

A. Forty-Five thousand.

* * * * *

168 MR. VADEN: Now, if the Court please, Mr. Davis has handed me, and I am going to hand them to the jury, three financial statements, all signed by William Epstein, first in February, '45, showing cash on hand twenty thousand dollars, — cash on hand and in banks of twenty thousand dollars, with total assets of one hundred fifty-two thousand dollars, and net worth of one hundred fifty-one thousand dollars.

He has further handed me a financial statement

executed as of December 31, '49, in which Mr. Epstein says he has cash on hand seventeen thousand five hundred dollars, cash in bank of thirty-six hundred dollars, total assets of two hundred sixty-nine thousand six hundred dollars, of which two hundred fifty-seven thousand three hundred is net worth.

He has further handed me financial statement signed by Mr. William Epstein as of January 1, 1952, in which Mr. Epstein says he has cash on hand and in banks, twenty-six thousand dollars, total assets of $484,410.32, of which $428,964.46 is net worth.

* * * * * *

171 (Said photostatic copies of documents were accordingly marked as Collective Exhibit 18 to the testimony of Mr. Davis.)

* * * * * *

174 Q. On the William Epstein bank account, will you please look at February 7, 1948, on the ledger sheet —.

A. February 7, 1948?

MR. VADEN: Yes.

A. Yes, sir.

Q. You show a deposit of that date?

A. Five thousand dollars.

* * * * *

Q. The reason I want to ask you about this particular one, I will ask you whether or not you see on February 7th, '48, in the Kirschner Store account—, do you see any kind of withdrawal on that date?

A. Five thousand dollars.

* * * * *

TESTIMONY OF ARTHUR W. FLANIGAN

DIRECT EXAMINATION
BY MR. HODGES:

* * * * * *

208 Q. What do you do, Mr. Flanigan?

A. I am manager of the Investors Department, Investors Diversified Service.

Q. Whereabouts is it, what city?

A. Minneapolis, Minnesota.

209 Q. Mr. Flanigan, did you bring with you records showing the purchase of some certificates for stock in the name of William Epstein, or maybe first Mrs. Pearl Epstein?

A. Yes, sir.

Q. Bring out savings certificate number 1 F 18 3766, then you have an S-6 certificate, and tell us by whom they were purchased and what they paid on them, and the financial history up there?

A. The F 18 3766 was purchased on December 17, 1936.

Q. By whom?

A. By Pearl Epstein.

* * * * * *

A. That was a fifteen year certificate, savings certificate, and the amount paid in was $1,831.50.

* * * * * *

210 Q. I noticed you don't have the value listed here for '51, is that right?

A. That is right.

Q. Why is that, now?

A. The contract matured and we issued a draft to her on November 19th of 1951.

Q. For how much?

A. In the amount of $2,573.50.

* * * * *

211 Q. You had an S. certificate, — S-6 certificate 100559. Would you start from the beginning on that and trace it on through?

A. That was purchased in the name of Mrs. Pearl Epstein on January 22nd of 1946.

* * * * *

212 Q. What was the amount paid in on this S-6 certificate when it matured on, I think, March 5, '52?

A. The total amount paid in by Mrs. Epstein was $9,568.63. We issued a draft or check on February 7, 1952, for $10,072.81.

Q. Now, back up to the F savings certificate amount, what was the total amount paid in by Mrs. Epstein on that?

A. The total amount paid in on this F certificate was $1,831.50.

Q. All right. That is one that matured December 17, '51, for $2,573.50?

A. That is right.

Q. All right. Now, Investors Diversified Services, Incorporated, in addition to having savings certificates
213 like those here, you also in effect have stock certificates, do you not?

A. That is right, yes, sir.

Q. All right, were any of those purchased?

A. There was a purchase of Investors Mutual share made on January 12th, 1944, in the amount of $2,100.00.

Q. I notice you had down there a subsequent investment accepted July 10, '44?

A. Yes, that was for one thousand dollars.

Q. Now, how much does that make all together on that?

A. Thirty-one hundred.

Q. All right. Were these investments all likewise issued in the name of Pearl Epstein?

A. Yes, sir.

* * * * *

TESTIMONY OF JACK W. RICH

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

217 Q. Forest Park Apartments. Will you tell us whether or not you sold an interest in that to Mr. Epstein back in '51?

A. Yes, sir, I sold Mr. Epstein and two other gentlemen.

Q. I don't care about the others, but as far as Mr. Epstein is concerned—.

A. I got a total of thirty-nine thousand dollars for the stock in the corporation.

Q. How much was Mr. Epstein's?

A. His was thirteen thousand dollars.

* * * * *

TESTIMONY OF A. R. DAVIS

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

221 Q. Can you read the January 1, '53, balances there in the record, that is all we are interested in.

Which one do you have there?

A. We have William and Epstein Store.

Q. All right, what is the William Epstein Store balance January 1, '53?

A. That is $1,029.80.

Q. And what is your balance on January 1, '53, on William Epstein?

A. $3,850.67.

* * * * *

222 Q. That is what I say. So the balances you have given us so far are not only the balances of January 1, '53, but that would be the closing balances as of December 31, '52, would it not?

A. That is right.

* * * * *

TESTIMONY OF HERMAN GRUBER

DIRECT EXAMINATION
BY MR. FITZHUGH:

* * * * *

227 Q. And I will ask you whether or not William and Pearl Epstein are connected with that subdivision, that company?

A. Yes, sir, they are partners.

Q. They are also partners. I will ask you whether or not you have brought with you records showing the financial net worth of William Epstein for the years '47 through '52 as reflected on the last day of each of those years?

A. I have, sir.

* * * * *

Q. In other words, it was the amount he had of financial interest in the partnership?

A. Yes, sir.

Q. Yes, sir. December 31, '47?

228 A. December 31, '47, was five thousand dollars.

Q. Now, then, on December 31, '48, what was the amount of his investment?

A. It was the same amount, five thousand dollars.

Q. Five thousand dollars?

A. Yes, sir.

Q. Then on December 31, '49?

A. That was also five thousand.

Q. December 31, 1950?

A. That was $14,535.17.

Q. An increase of ten thousand dollars December 31, '51?

A. That was $12,492.95.

Q. December 31, '52?

A. $10,451.62.

* * * * *

REDIRECT EXAMINATION
BY MR. FITZHUGH:

233 Q. Mr. Gruber, are you related to Mr. Epstein or Mr. Gerber?

A. I am related to Mr. Gerber.

Q. What is the relationship?

A. He and I married sisters. I suppose we are brother-in-laws.

Q. What kind of insurance did he want?

A. He wanted safe burglary insurance.

Q. He wanted safe burglary insurance. And the rate was—, for insuring money in a location of that kind, was terrifically high?

A. Well, I don't remember just what the rate was, but as I remember, it was high, as compared to other locations in other businesses.

234 Q. And you declined to write any?

A. Not because of the rate. I just did not think our company would want to get one hundred and forty or fifty thousand dollars worth of money.

Q. You did not think your company would be interested in writing it at all?

A. No, sir, I did not, for that much money and in that location.

* * * * *

Q. What other insurance did Mr. Epstein carry with you, Mr. Gruber?

A. We had a lot of fire insurance on his stock of merchandise, insurance on other people's property in the pawn shop. We carried a lot of insurance on some of his real estate.

* * * * *

235 Q. Well, you are grateful to him for that business?

A. Naturally.

* * * * *

TESTIMONY OF ERUS BRADSHAW

DIRECT EXAMINATION

BY MR. HODGES:

* * * * *

236 Q. Have you been keeping the books of the Jaffe Dry Goods Store in Osceola, Arkansas?

A. Yes, sir, since January 1, 1950.

Q. Do you have there with you an itemized statement of the partners' capital accounts of the Jaffe Dry Goods Stores?

A. Yes, sir.

Q. Who are the partners in it?

A. Mr. Edward Weiss and Mr. William Epstein.

Q. What is Mr. Epstein's share?

A. Three-fourths.

Q. And Mr. Weiss one-fourth?

237 A. Yes, sir.

* * * * *

Q. All right. Give me the end of '49 then.

A. The end of '49, total capital was $21,802.83, of which Mr. Epstein had $13,401.42.

Q. I see. What about the end of 1950?

A. Total of $21,452.85.

Q. What was Epstein's part of that?

A. $13,226.43.

Q. All right, then, December 31, '51?

A. Total of $18,724.63, and Mr. Epstein's was $11,862.32.

Q. December 31, '52?

A. Total of $17,509.71. Mr. Epstein's was $11,254.87.

Q. December the 31st, '53?

A. '53, the total was $15,398.69.

* * * * *

TESTIMONY OF KEMMONS WILSON

DIRECT EXAMINATION

BY MR. HODGES:

* * * * *

243 Q. What is your occupation, Mr. Wilson?

A. I am a builder, sir.

Q. You reside in Memphis, Tennessee?

A. Yes, sir.

Q. Do you know the defendant, William Epstein?

A. Yes, sir.

Q. I am calling your attention to a financial transaction that you were involved in with Mr. Epstein back in 1952. I believe you put up two hundred and fifty dollars, and Mr. Epstein here put up two hundred and fifty dollars, and another individual put up two hundred and fifty dollars in cash, is that correct?

A. Yes, sir.

Q. Do you remember that transaction? I hand you a check here drawn on Manhattan Branch of U. P. Bank for two hundred and fifty dollars, and ask you whether or not that is the check that Epstein paid into the part-
244 nership of Camp, Epstein and Wilson?

A. It is, sir.

* * * * *

245 A. — Which corporation assumed —, we bought a corporation —, or corporations.

Q. What was the total amount, the figure, I didn't hear it?

246 A. About two and a half million dollars.

Q. You assumed a mortgage —, the corporation you bought assumed mortgages to total the amount of two and a half million dollars?

A. The corporation had the mortgages, yes.

* * * * *

247 Q. I see. Did any of you at the beginning ever put more than the two hundred and fifty dollars cash into the deal?

A. No, sir, as far as I know.

MR. HODGES: I believe that is all.

* * * * *

TESTIMONY OF MRS. WILMA B. BILLINGSLEY

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

250 Q. What do you do, please, ma'am?

A. I look after the office work for my husband's business.

Q. And what is his business?

A. Billingsley Floor and Blind Company.

Q. Yes, ma'am. And, now, we have subpoenaed you people to bring some records up here relative to some work that was done for Mr. — Mr. Epstein, I believe?

A. Yes, sir.

* * * * *

251 A. We had an order for five permanent awnings.

Q. Yes. When was the order dated?

A. April 26th, '50.

Q. And where were the awnings to be put?

A. 661 East Drive.

Q. And how much were they, Mrs. B°—?

A. $237.66, including the tax.

Q. Yes. Did you get a check for it?

A. Yes, sir.

* * * * *

TESTIMONY OF PAUL L'HEUREUX

DIRECT EXAMINATION
BY MR. FITZHUGH:

* * * * *

253 Q. You have with you certain records that were subpoenaed by the Government in connection with this

Epstein case, original records of the Union Planters Title Guaranty Company.

A. Yes, sir.

* * * * *

255 Q. Do you have a deal relating to 4.69/100ths acres on Highway 51 South?

A. I have a deal here, 4.69 acres, that concerns parts lots 50, 53, 54, 56 to 63, and unsold parts of lots 66, 68, 69, 52, 55, of the Ferguson and Bray —.

Q. All right, that was purchased in —?

A. Yes.

Q. When?

A. In 1950.

Q. By Mr. Epstein and Mr. Jeter—?

A. Just a second. The deed was filed for record on January 27, 1950.

MR. FITZHUGH: Yes.

A. To Mr. Epstein and Mr. Jeter.

Q. How much did he pay for it? How much did Mr. Epstein pay for it?

A. Our policy covers $7,269.50.

* * * * *

257 Q. What other real estate deals did you handle for Mr. Epstein during the years 1949, — '48, '49, 50, '51 and '52?

A. Here is another one here, sale by Curry's to William Epstein and wife, Pearl Epstein, November 16, '51, Lots 3, 4, 5, 6, Block "E", Magnolia Blossom Subdivision.

Q. How much did Mr. Epstein pay in connection with that property?

A. Settlement sheet shows that the purchase price was $1,250.00.

* * * * *

258 A. Here is another one here, Lot 2, Block 2, Ingleside Subdivision.

Q. What date was that?

A. August 2nd, 1951. Real and personal property contract was for twenty-seven thousand.

Q. That is the property known as 1638 Union Avenue, isn't it?

A. Yes, sir.

Q. And what was it?

A. Contract price for both real and personal property involved in that contract was twenty-seven thousand.

Q. And was there a mortgage on the property, and did Mr. Epstein pay the difference between the mortgage and the closing costs there?

A. Yes, they assumed a Home Federal loan in the amount of $9,219.55.

Q. I hand you what purports to be a check of Mr. William Epstein, $14,950.00—.

259

* * * * *

Q. All right, now what other transactions—, what other transactions did you handle for Mr. Epstein?

A. Let's see what this is. There is another file, property in Arkansas, George Randolph and wife, and Wassell Randolph and others to—

* * * * *

260 Q. And how much was the consideration for that property, Mr. L'Heureux?

A. Let me see if I can find that settlement sheet. I don't find the settlement sheet in here. Let's see what it is. Title policy shows it covering $15,500.00.

Q. O. K. And that was the consideration for—, what was that date?

A. September 28, '49.

* * * * *

261 A. Here is a contract of sale dated October 21, '49, between William Epstein and Jeter, H. H. Jeter, sell-
262 ers, to a W. S. Cockerham.

Q. All right, what is the consideration?

A. Eighty dollars per front foot, which is the exact price to be contingent upon a survey; two thousand dollars cash.

* * * * *

Q. What does this relate to, now, what property?

A. This relates to property purchased from Mitchell and wife to William Epstein and wife, Lot 22 and West half of Lot 23, Block 27, West Dixie Heights Subdivision, five hundred dollars.

* * * * *

263 Q. I will hand you—, what was the down payment on that?

A. The earnest money was two hundred dollars; amount to purchaser to close—, at time of closing, was $1,335.96.

* * * * *

264 Q. You don't have your records on that 1383-1385 Gold Avenue?

A. I don't think we—, we looked.

Q. I hand you two checks that might refresh your memory about that, totaling $583.15, payable to your company, —one for $483.15 is payable to you, Union Planters Title Guaranty Company, and $100.00 to Block Realty Company.

Do you recall that transaction?

A. No. Let me see if there is one here. We had one of $500.00 I believe. The amount which is needed at time of closing was $483.15.

* * * * * *

TESTIMONY OF LAWRENCE MASON

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

268 Q. What sort of work are you engaged in?

A. I am a reporter for Dun & Bradstreet, Incorporated.

* * * * *

273 Q. Now, I will ask you whether or not this is the business of Dun & Bradstreet, the reporting of credit information to their subscribers?

A. We are recognized, I think, as such.

Q. Yes. And your job is to get the information?

A. Yes, sir.

* * * * *

276 (Said photostatic copies of documents were accordingly marked as Collective Exhibit 1 to the testimony of Mr. Mason.)

* * * * *

TESTIMONY OF FRED P. CAWEIN

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

281. Q. And what do you do, sir?

A. Well, for fifty-five years, until November 1st, —I mean, until April 1st, I was employed by Dun & Bradstreet. I retired on April 1st.

* * * * *

282 Q. I will ask you, please, to look at this paper I am handing you and see whether or not you fixed up or had anything to do with the report on a Mr. William Epstein, who had a business down on Beale Street?

A. Yes, sir, I made that report.

* * * * * *

284 A. (Continuing) But this information was obtained by a personal call at his place of business.

Q. I don't know, —do you happen to have a financial statement on that one? Do you see one?

A. Yes, sir, February 2, 1945.

Q. And if that is in that report, with your code number on it, the financial statement at that time was on file with Dun & Bradstreet, is that right?

A. That is right.

* * * * * *

285 (Said photostatic copy of document was accordingly marked as Exhibit 1 to the testimony of Mr. Cawein.)

* * * * * *

TESTIMONY OF CHARLES D. JOHNSTON

DIRECT EXAMINATION
BY MR. VADEN:

* * * * * *

287 Q. What sort of work do you do?

A. I am a credit investigator for Dun & Bradstreet.

* * * * *

290 THE COURT: Objection overruled.

(Said photostatic copy of document was accordingly marked as Exhibit 1 to the testimony of Mr. Johnston.)

Q. Well, now, take this back, if you will, please, sir, and tell us what the state of that financial statement is, and whether or not it indicates it was signed by Mr. William Epstein?

A. Yes, sir, it was signed by William Epstein. The date of it is December 31, '46.

* * * * *

TESTIMONY OF H. H. GREEN

DIRECT EXAMINATION
BY MR. FITZHUGH:

* * * * *

295 Q. I will ask you to state whether or not you did some business for Mr. William Epstein, the defendant here, back in November, '51, is that correct?

A. Correct.

Q. What kind of work was it, electrical?

A. Electrical work.

Q. What property was that?

A. On Decatur Street.

Q. Property owned by him?

A. Yes, sir.

Q. —On his property. And I hand you a check payable to Green Electric Company, purportedly signed by William—

296 MR. WILL GERBER: Five hundred and some-odd dollars.

MR. FITZHUGH: Five hundred sixty dollars.

MR. WILL GERBER: No objection to the introduction, then, it is O. K.

Q. All right, that is check given you in payment for electrical work?

A. Yes, sir.

* * * * *

TESTIMONY OF CHARLES E. PRESCOTT

DIRECT EXAMINATION
BY MR. HODGES:

* * * * *

298 Q. You sold the corporation off, and to whom did you sell it?

A. There was five of them bought it from the corporation.

Q. One of them the defendant Epstein, William Epstein, on trial here today?

A. Yes, sir.

Q. Do you have a copy of that contract where you sold stock in the corporation?

A. Yes, sir.

Q. Let's see it, please, sir.

This is contract for sale of corporate stock, entered into on the 28th day of December, '50, —is that the date?

299 A. Yes, sir.

Q. That is the date up here at the top?

A. Yes, sir.

Q. And various parties buying interests, Harry Bloomfield, twenty-five, David L. Hutkin, twenty-five, William L. Epstein, sixteen and two-thirds per cent, is that correct? Is that correct?

A. Yes, sir.

Q. Nat Epstein, sixteen and two-thirds, Nat Krichter, sixteen and two-thirds per cent?

A. Yes, that is right.

Q. What was the total consideration for the sale of your stock?

A. Twenty-five thousand dollars.

* * * * * *

Q. What would that roughly make Mr. Epstein's share be on that?

A. I don't know, according to the money—, what sixteen and two-thirds would be.

Q. Make it roughly, in round figures, about forty-two hundred dollars?

A. I imagine it figures about that.

* * * * * *

TESTIMONY OF JAMES H. OZMENT, JR.

DIRECT EXAMINATION
BY MR. HODGES:

* * * * * *

303 Q. Where do you live? What business are you in?

A. Dyersburg, Tennessee; automobile business.

Q. Do you sell—you have got a Buick agency up there?

A. Yes, sir.

Q. Can you tell us whether or not back in December—, I think December 21, '50, you sold a Buick automobile to William Epstein for $4,560.50?

A. That is right, yes, sir.

* * * * * *

TESTIMONY OF H. H. JETER

DIRECT EXAMINATION
BY MR. HODGES:

* * * * * *

305 Q. Can you tell us whether or not back in 1951 you had occasion to have some business dealings with Mr. William Epstein?

A. I did.

Q. The defendant here today?

A. Yes, sir.

Q. (Continuing) —Involving in particular 4.69 acres of land on U. S. Highway Number 51 South in Shelby County, Tennessee?

A. Yes, sir.

Q. All right. Did you as the partner of Mr. Epstein jointly acquire that deal—, or an undivided half interest in that, in effect?

A. Yes, sir, we did.

306 Q. What was paid for that land?

* * * * *

A. Six thousand and something.

Q. $3,673.65. That is what each of you paid for the land?

A. I think that is right. I have got the sheets.

* * * * *

Q. And then Mr. Epstein later on in '52 paid a man named Lacey Dix, dirt contractor, four hundred dollars for grading this land off, is that right?

A. Right.

Q. And you likewise paid that sum?

A. Yes, sir.

307 Q. In other words, the total grading bill was eight hundred dollars?

A. Eight hundred dollars.

* * * * *

309 Q. Get the notes out and let's take a look at what the total consideration is you received when you sold this, the partners?

A. To Mr. Cockerham, you said?

MR. HODGES: That is right.

A. All right.

Q. That is whom you sold it to in '49?

A. Well, it is right there. That is the settlement sheet for it.

Q. All right. It shows property purchased by W. S. Cockerham from William Epstein and H. H. Jeter, November 2, '49. All right. Purchase price, 546.1 feet, —546.1 feet at $80.00 per foot, total $43,688.00. That is the total purchase price you all sold it; half that went to you and half to Mr. Epstein.

* * * * *

TESTIMONY OF ALLEN WOOD WINKLE

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

311 Q. Who are you with, Mr. Winkle?

A. Russell Reeves Company.

Q. And what sort of business is that, please?

A. Automobile business.

Q. Any particular brand?

A. Oldsmobile.

Q. I will ask you whether or not in 1949 you had occasion to sell a car to Mrs. William Epstein, 661 East Drive, Memphis, Tennessee?

A. Yes, sir.

* * * * *

312 Q. How much was the total cash price?

A. $2,633.43.

Q. Was the company paid for the car?

A. Beg your pardon?

Q. Did you receive payment for the car when you sold it?

A. Yes, sir.

* * * * *

TESTIMONY OF HUGH M. ADAMS

DIRECT EXAMINATION

BY MR. FITZHUGH:

313 Q. Will you state your name, please?

A. Hugh M. Adams.

Q. You are in the real estate business?

A. That is right.

Q. I ask you whether or not back in July, 1951, you had occasion to handle a real estate transaction for William Epstein, the defendant?

A. I did.

314 Q. And I hand you a purported photostat of a check which appears to be a check for a thousand dollars—.

MR. WILL GERBER: It is O. K.

Q. (Continuing) —of a William Epstein, and ask you what that represents.

A. That was earnest money.

Q. On this property?

A. Yes.

Q. Located at 1638 Union, wasn't it?

A. That is right.

* * * * *

Q. What was the total sales price of the property that he purchased?

A. Twenty-seven thousand, even.

* * * * *

TESTIMONY OF LOUISE B. BYRNE

DIRECT EXAMINATION

BY MR. VADEN:

* * * * *

317 Q. Thank you, ma'am. And who are you with, Mrs. Byrne?

A. The Home Federal Savings loan department.

Q. Yes. You are in the loan department over there?

A. I am.

* * * * *

Q. Yes. Now, will you tell us, if you will, please, —in the first place, who was the loan originally made to?

A. He ry Rosenstein.

Q. Yes. And will you tell us whether or not it was later taken over by William Epstein and wife, Pearl?

A. It was. We were notified on August 2, 1951.

* * * * *

318 Q. Will you please tell us what amount, if any, was paid on the principal part of your loan as of August—, I mean, from August to December, 1951?

A. Let's see, the loan was originally $11,500.00, and at the time that Mr. and Mrs. Epstein took it over the principal balance was $9,270.59.

Q. Yes. Now, I want to go into the payments, if you will.

A. All right.

* * * * *

Q. So, then, in the meantime, they would have paid $263.80, is that about it?

A. Yes, that is right.

* * * * *

319 Q. How much did they pay in '51 on the interest?

• • • • •

A. Interest would be $190.95.

• • • • •

Q. From August through December, I believe, and they paid five months?

A. $139.25.

• • • • •

320 Q. In 1952, do you have the payments that were paid on principal in '52?

A. Well, let's see. Balance end of '51, $9,006.79. At end of '52 it was $8,350.84. So they would have paid $655.95 in principal in '52.

• • • • •

A. $435.00 interest.

• • • • •

Q. How much escrow payments in 1952?

A. $334.20.

Q. And ten ninety-five—, would be about fourteen twenty, or fourteen thirty, wouldn't it?

321 A. $1,425.60.

Q. All right. That was paid in on the Union Avenue property in the year 1952?

A. Yes, sir.

• • • • •

TESTIMONY OF ROY M. SCOTT

DIRECT EXAMINATION
BY MR. HODGES:

• • • • •

324 Q. How much did he pay and how many shares did he have?

A. Q. & S. Realty Company, Mr. Epstein purchased

one hundred twenty-five shares of stock for twelve thousand five hundred dollars, and also loaned the corporation sixty-eight hundred dollars, for which he took a note.

325 Q. On that same day, did he purchase the stock?

A. Same date he purchased Q. & S. Storage and Transfer Company stock, fifty-two shares for fifty-two hundred dollars.

Q. Yes. I say he loaned them the sixty-eight hundred dollars the same day he purchased this one hundred and twenty-five shares of stock?

A. That is right.

* * * * *

326 A. All of the assets of the corporation were distributed at that time. Mr. Epstein received United States Treasury bond that had a market value of $5,037.50. The accrued on that bond was $46.88. Mr. Epstein owed them an—, owed the corporation an account for storage and other charges, $254.55, which was credited. He received the corporation's check for $1,934.99. The four items making a total of $7,273.92.

Q. That is what he netted from the sale of stock?

A. That is what he netted from the Q. & S. Storage and Transfer Company.

* * * * *

TESTIMONY OF EDWARD LEVINE

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

333 Q. Do you know a William Epstein?

A. Yes, sir.

Q. Do you know some property owned by him at 661 East Drive here in Memphis?

A. Yes, sir.

* * * * *

Q. What was the nature of it? What was the general nature of the work? Don't care about the details.

A. We remodeled the interior of the house.

Q. Did you get paid for it?

A. Yes, sir.

* * * * *

335 Q. That is all 661 East Drive. And if my figures are correct, that shows on here $25,668.25. I don't know whether you have that total on it or not.

A. That is right, I have the total on it.

* * * * *

Q. Now, I will ask you whether or not, Mr. Levine, you had occasion to do some additional work for Mr. William Epstein in the year '50,—I believe it has to do with repairs on some buildings on 122 Beale?

A. That is right.

* * * * *

336 Q. Is that all you were paid for repair on that building, 122 Beale?

A. Yes, sir.

Q. —By Mr. Epstein?

A. Yes, sir.

Q. I show that $900.60, or I think—, or I believe it is $1,000.60, —is that right, about?

A. One thousand dollars and sixty cents. Yes, sir.

* * * * *

Q. Yes, sir. Now, I will ask you whether or not along in 1949 you did not have occasion to—at the request of Mr. Epstein, to look into the Old Banner Laundry Building down on—, I believe on Hernando, isn't it?

A. Yes, sir, that is right.

• • • • • •

339 Q. So the difference of one hundred and seventy-five, he just gave you a check, and you gave it to the Chandler man?

A. That is right. I had hired Chandler.

• • • • • •

TESTIMONY OF MISS KATHERINE McCALEB

DIRECT EXAMINATION
BY MR. FITZHUGH:

• • • • • •

340 Q. I will ask you to state whether or not the State Mutual wrote the defendant, William Epstein, a policy of life insurance in recent years?

A. Yes, sir.

• • • • • •

Q. Will you state to his Honor and the jury the amount of premiums on this policy, —which was in the sum of twenty thousand dollars, wasn't it?

A. Yes, sir.

• • • • • •

341 A. In '49 was $841.40.

Q. Paid by Mr. William Epstein?

A. Yes, sir.

Q. 1950?

A. $858.00.

Q. 1951?

A. $854.00.

Q. 1952?

A. $850.00.

• • • • • •

TESTIMONY OF LACEY DIX

DIRECT EXAMINATION
BY MR. FITZHUGH:

* * * * * *

343 Q. I ask you whether or not you had some—, made some grading improvement and excavation in '52 on property owned or half of property owned by Mr. William Epstein?

A. Yes, sir, I did.

* * * * *

Q. What was the cost of improvement, grading improvements?

A. The cost was eight hundred dollars.

* * * * * *

TESTIMONY OF CATHERINE C. BURT

DIRECT EXAMINATION
BY MR. HODGES:

* * * * * *

346 Q. Mrs. Burt, you were subpoenaed up here and requested to bring information relating to two policies, Epstein policies. The first one is number 882907, issued January 21, 1929, on the life of William Epstein. Do you have that one?

A. Yes.

Q. What is the amount of that one, and who is the beneficiary?

* * * * * *

A. Five thousand dollars.

* * * * * *

347 Q. During the years '48 through '51, tell us what the annual premium was?

A. $146.90.

• • • • • •

348 Q. Now, you have got another policy there, number 10827089?

A. Yes, sir.

• • • • • •

Q. During the years '48 through '52, the annual premium every year $108.05?

A. Yes, sir.

• • • • • •

TESTIMONY OF GUY BOYER

DIRECT EXAMINATION
BY MR. VADEN:

• • • • • •

350 Q. By whom are you employed?

A. Prudential Insurance Company.

• • • • • •

351 Q. How many policies do you have?

A. Four; four policies.

Q. Four policies. What is the amount of them?

A. Face amount of the four, twenty thousand.

• • • • • •

352 Q. So we will agree from '52 back through '48, on the whole twenty thousand dollars, Prudential was receiving—?

A. I did not add those up, Ed; I could have.

Q. (Continued)—About $654.40, is that about right?

A. That is about right, yes, sir.

Q. Each year?

A. That is right.

• • • • • •

TESTIMONY OF W. M. EMERSON

DIRECT EXAMINATION
BY MR. HODGES:

* * * * *

355 Q. Get out file number 34555 showing purchase by William Epstein from Mildred Miller of Decatur Street property.

A. Yes, sir.

Q. What is the date of purchase?

A. The deed said August 15, '51.

Q. I will hand you a five hundred dollar check payable to J. Miller, and ask you if that is not down payment on that property? The date looks like July 27, '51.

A. Yes, sir, this is earnest money on the Decatur Street property.

Q. I likewise hand you debit showing balance—, on the account of William Epstein, August 13, '51, $10,039.25, Commerce Title Guaranty Company, and ask you if that is not the balance?

A. That is the same figure reflected by settlement sheet as to amount to purchase.

* * * * *

356 Q. Payment of this land was by William Epstein's check on June 28, '52, for $685.21. I hand you a check for $685.21 and ask you if you can identify that.

A. That corresponds with the settlement sheet, yes, sir.

* * * * *

358 Q. What was the total purchase price of those four lots?

A. The total purchase price of those four lots as reflected by the settlement sheet was four thousand dollars.

• • • • • •

TESTIMONY OF MRS. IRVING NATHANSON

DIRECT EXAMINATION
BY MR. FITZHUGH:

• • • • • •

360 Q. I ask you whether or not you brought the books out at Alan's Floor Covering, and whether or not these records show a sale in '50 to one William Epstein, the defendant here?

A. Yes, sir, they do.

Q. What did the sale cover?

A. Carpeting and padding.

Q. Is that one carpet with a pad underneath?

A. Yes, sir.

Q. And what was the cost of that carpet?

A. $2,290.70.

• • • • • •

361 Q. This carpet was placed in his home?

A. Yes, sir.

• • • • • •

TESTIMONY OF AUVERGNE BLAYLOCK

DIRECT EXAMINATION
BY MR. VADEN:

• • • • • •

368 Q. All right, as an example, what was the contract price for building the Barton Street property? That would be number—

A. What date was that?

Q. November 7, '51.

A. November 7, 1951. We had a contract to construct a duplex on Barton Street, $5,660.00.

Q. All right, sir. Now, what was the contract price on the building—, maybe they were all the same address, I don't know, —that Olympic Street stuff, —fifty-six—, seem to be fifty-six sixty?

A. There was a separate contract, sir, on each one of those duplexes, the same price of $5,660.00, and a separate contract being drawn in each one of them.

* * * * *

371 Q. They were all built?

A. They were all built; the construction was completed.

* * * * *

374 Q. Come down the list, if you will.

A. 10-18-51, Paid $1,833.33 by Mr. Epstein, re 1902-04 Farrington.

375 The next entry of payments is 11-7-51, Paid $1,833.33 by Mr. Epstein, first payment re 1510-12 Barton.

* * * * * *

A. Then 1-2-52, Paid $3,666.66 by William Epstein, his check number 362, second payment on Barton and Farrington.

* * * * *

Then on 2-4-52, Paid $3,986.68 by William Epstein, his check number 28, third payment on Barton and Farrington.

* * * * *

Q. Have you got a total on that whole building contract out there? How much did it come to?

376 A. Total on all this total building, two thousand eight hundred—, I mean, $28,360.00. Contract payment was

$28,300.00. There was an additional $60.00 for grading on Olympic.

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TESTIMONY OF E. H. GODWIN

DIRECT EXAMINATION
BY MR. HODGES:

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382 Q. Mr. Godwin, back in February, '51, tell us whether or not you had occasion to do some business with the defendant, William Epstein here?

383 A. Yes, sir; I sold him one set of notes.

* * * * *

Q. And how much did he pay you for that? Nothing had been paid on this note, had it? This, —these two notes—

A. No, sir.

Q. (Continuing) Total six thousand dollars, —these two notes total six thousand dollars.

384 How much did he pay for these notes?

A. Forty-five hundred dollars.

* * * * *

TESTIMONY OF TROY MULLINS

DIRECT EXAMINATION
BY MR. HODGES:

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386 Q. Mr. Mullins, did you purchase some property back in February of '51, February 6th, a home at 564 Mosby?

A. Yes, sir.

* * * * *

387 Q. All right, how much did you pay for this house?

A. Paid seven thousand.

* * * * *

TESTIMONY OF TOM GOODEN

DIRECT EXAMINATION
BY MR. FITZHUGH:

394 Q. Are you Tom Gooden?

A. Yes, sir.

Q. I will ask you to state whether or not back around November first, 1951, you purchased a piece of property here in Memphis from the defendant, William Epstein?

395 A. Yes, sir.

Q. How much did you agree to pay him?

A. Four thousand five hundred dollars.

Q. How much did you pay down? Did you pay a cash payment down on the property?

A. Three hundred dollars.

Q. And how much did you agree to pay each month after that?

A. $35.45.

Q. Have you paid that each month since November 1, 1951?

A. Yes, sir.

* * * * *

TESTIMONY OF DIAMOND BARRETT

DIRECT EXAMINATION
BY MR. FITZHUGH:

* * * * *

396 Q. I will ask you to state, Diamond, whether or not on or about September 8, '51, you purchased a piece of property here in Memphis from the defendant, William Epstein?

A. Yes, sir.

397 Q. Did you and your wife purchase that property?

A. Yes, sir.

Q. How much did you agree to pay for it?
A. Forty-five hundred dollars.

• • • • • •

Q. How much have you paid monthly since then?
A. Thirty-five dollars, plus six per cent interest.
Q. Where is it located?
A. 643 Decatur, —645, —Between Jackson and Decatur.

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TESTIMONY OF JOHN T. DWYER

DIRECT EXAMINATION
BY MR. HODGES:

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399 Q. What is your occupation, Mr. Dwyer?
A. Commissioner of Public Service, City of Memphis.
Q. Memphis, Tennessee?
A. Yes, sir.
Q. Back in '52, tell us whether or not you had a duplex constructed on a lot located at 2143-45 Eldridge, here in Memphis, Tennessee?
A. Yes, sir.
Q. That was constructed by the W. F. Jameson Construction Company?
A. Yes, sir.
Q. This duplex you were having built there was being built for rental purposes, is that right?
A. Yes, sir.
Q. How did you have that lot financed?
A. Through a loan through E. H. Crump and Company for five thousand dollars, and the additional
400 money I borrowed from Mr. Epstein.

• • • • • •

Q. All right. And you gave E. H. Crump a first mortgage on the property for it?

A. Yes, sir.

Q. All right. The balance of the money, roughly fourteen hundred thirty-one dollars, you say that was obtained as a loan from the defendant, William Epstein?

A. Yes, sir.

* * * * * *

401 Q. Was any security or collateral given for this money that Epstein loaned you, the fourteen hundred thirty-one dollars?

A. No.

Q. Was any promissory note executed evidencing that money?

A. No, sir.

Q. Was any interest charged for this money?

A. No, sir.

* * * * *

402 Q. What time—, that was November, was it?

A. Yes, sir.

Q. Prior to that time your occupation was—?

A. Oh, Police Department, Assistant Chief of Police.

* * * * *

TESTIMONY OF ANNA COLEMAN

DIRECT EXAMINATION
BY MR. VADEN:

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410 Q. —Whether or not you bought any property along in September, '51, from Mr. Epstein for forty-seven hundred fifty dollars?

A. Yes, sir.

Q. I believe you paid ten per cent down, four hundred seventy-five dollars?

* * * * *

Q. How much have you been paying each month? How was you to pay out the balance of the forty-seven hundred fifty dollars?

A. $34.69 a month.

* * * * *

TESTIMONY OF HAL A. HALL

DIRECT EXAMINATION
BY MR. HODGES:

* * * * *

412 Q. Now, Hal, tell us whether or not back in '52 did you purchase some property at 1383-85 Gold Avenue here in Memphis, Tennessee?

A. I did.

Q. Did you purchase that in your name or your wife's name?

A. I did.

Q. From whom did you purchase it?

A. Mr. William Epstein and wife.

Q. Mr. William Epstein and wife?

A. Yes, sir.

Q. How much was the total purchase price on that property?

A. Total was nine thousand, seven fifty.

Q. $9,750.00?

* * * * *

TESTIMONY OF BERTHA THOMAS

DIRECT EXAMINATION
BY MR. FITZHUGH:

* * * * *

416 Q. I will ask you whether or not you and your son, Sol Clayborn, on or about November 5, '51, purchased a duplex in Memphis?

A. Well, we did.

Q. From William Epstein?

A. Yes.

Q. Yes, you did. And how much did you agree to pay for it?

* * * * *

A. Forty-five hundred dollars.

Q. How much did you pay down?

417 A. Three hundred.

Q. And did you execute some notes, sign some notes and turn them over to him?

A. Yes, sir.

Q. How much were they?

A. $35.45 a month, you know, —15th of each month.

* * * * *

TESTIMONY OF COLUMBUS NATHAN

DIRECT EXAMINATION
BY MR. VADEN:

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419 Q. How long have you been working for Mr. William Epstein?

A. I would say around about twenty years.

Q. And what sort of work do you do out there?

A. Houseboy.

* * * * *

Q. Now, Columbus, back there in '48, '49, '50, '51, and '52, all those years along in there, how many servants did Mr. Epstein have out there around all the time?

A. It was two, and three, including me.

• • • • •

420 A. Cook, maid, and nurse.

• • • • •

Q. Well, along up in '49, '50, '51, '52, around in those years, in that particular period, what were you making a week at that time?

A. Seventeen.

Q. Seventeen. And then do you know whether or not 421 along in '52 it went up to twenty dollars a week?

A. Yes, sir.

Q. Twenty. Let me ask you this. In addition, you get your food and a place to live?

A. Well, I gets a few clothes.

Q. You do eat out there, too?

A. Yes, sir.

• • • • •

Q. What was she paid as cook, if you know?

A. I think it was around seventeen.

Q. You think it was around seventeen. Have you ever been around there when the other colored women were paid off?

A. Yes, sir.

Q. About what were they getting in money?

A. Around seventeen.

• • • • •

TESTIMONY OF HUBERT A. NORRIS

DIRECT EXAMINATION
BY MR. HODGES:

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438 Q. Tell us what does your job entail as a Special Agent with the Intelligence Division of the Internal Revenue Service?

A. Well, it entails generally the investigation and enforcing of all the Internal Revenue laws, with the exception of Alcohol and Tobacco Tax.

* * * * *

439 Q. Mr. Norris, tell us the education advantages you have had to fit yourself for the duties that you perform as a Special Agent of the Internal Revenue.

A. I am a graduate of the University of Mississippi, Business Administration. And since then most of my work and occupation has been in the accounting field, including service with the Army, and then ten years employment as a Special Agent with the Treasury Department.

Q. You say while at the University of Mississippi you took accounting courses there?

A. Yes, sir.

Q. And what did you do in the Army, while you were in the Army?

440 A. I was sent to Detroit, Michigan, to audit and negotiate and work on Government contracts, Army contracts with General Motors, Ford and Chrysler Corporation.

* * * * *

Q. I see. Now, you stated you have been with the Intelligence Division of the Internal Revenue for ten years?

A. Yes, sir.

Q. Where have you been stationed during those ten years, Mr. Norris?

A. At Memphis.

Q. Here in Memphis the whole time?

A. Yes, sir.

Q. Now, during the ten years you have been employed

in this capacity, tell us whether or not you had worked up many or few cases of this nature you are testifying about here today?

A. Yes, sir, there have been several others, numerous...

* * * * * *

441 Q. Getting down to what is involved here, Mr. Norris, you were assigned to work up this case?

A. I was assigned to look at the papers of the Revenue Agent and determine whether or not it should be investigated.

Q. You were determining to find out what the facts were?

A. Yes, sir.

Q. Just start at the beginning and tell us when your investigation started, and who were the cooperating agents in the investigation with you.

A. Well, this matter first came to my attention along about October 14, 1953, and that is when the Revenue Agent Huddleston had been doing some work on the matter, and he came to me, and I spent two or not over three hours
442 going over his papers and findings that he had at that time, and from my study of the information he had it was my opinion and I did recommend and did decide to conduct a further investigation.

MR. HODGES: I see.

A. (Continuing) And I did have his work products, and I used that, and then continued to conduct an investigation.

* * * * * *

443 Q. Now, when you investigated the case to determine what the facts were, you can tell us whether or not in this case during that investigation did you have occasion to

hold conferences with the defendant and/or his representatives?

A. Yes, sir, there were numerous such conferences.

• • • • •

A. Well, by eliminating the details of arranging the conferences, and so forth, I know that a conference was had on October 19—, on November 19, 1954, with Mr. Epstein.

• • • • •

444 A. (Continuing) And one of his employees, a public accountant, Mr. Summers, accompanied him at that meeting.

Q. That is Mr. Summers who testified here on the stand previously, is that right?

A. Yes, sir. And the other people there were Revenue Agent Raines and myself.

• • • • •

Q. Under Internal Revenue regulations, where an accountant represents a man, does the Department reqqire the furnishing of power of attorney stating that they do represent this man?

A. That is the policy. We will—, at least, I will, anyway, go ahead and deal with them the first time until they have an opportunity to do that.

Power of attorney was submitted at that meeting by Mr. Jones and the defendant.

Q. Do you have that power of attorney here with you?

A. Yes, sir.

• • • • •

MR. HODGES: All right. (Reading)

"Power of Attorney

"State of Tennessee

"County of Shelby

"Know all men by these presents, That I, William Epstein, residing at Memphis, Tennessee, do hereby make, constitute and appoint Homer K. Jones, Certified Public Accountant of Memphis, Tenn., my true and lawful attorney in fact, to appear before and confer with the proper officials of the Bureau of Internal Revenue, Treasury Department, with reference to my Federal Income, Excess Profits or other taxes . . ."

• • • • • •

446 Q. Yes, sir. Is Homer K. Jones registered with the Treasury Department?

A. Yes, he is authorized to represent clients before the Treasury Department.

Q. And at that time, Mr. Epstein acknowledged that he had executed this power of attorney in this conference you held, is that correct?

447 A. That was submitted jointly by them at that time.

• • • • • •

Q. Maybe I had better—, I think maybe you are right. I won't read this one to the jury, likewise on the form 448 of Homer K. Jones, Power of attorney signed by Pearl Epstein on apparently the same date. It was handed in at the same time, is that correct?

A. Yes, sir.

• • • • • •

Q. Now, without going further into the detail of that conference at this time, let's pass on. Well, so we will relate everything chronologically, when was the next meeting held with the taxpayer, the defendant, now, William Ep- 449 stein, or his representative?

A. Well, on November 22nd, Mr. Jones—

Q. That is November 22, '54?

A. Yes, sir.

• • • • • •

A. (Continuing) On November 22, '54, Mr. Jones came and took all records of the defendant that were in my possession. I turned them over to Mr. Summers on that date, and received a receipt. That is the next contact I had with his counsel or his representative.

* * * * *

450 Q. All right, go ahead.

A. There was another impromptu conference with Mr. Jones on January 24, 1955. There was a conference with Mr. Jones occurring in two parts on March 21st and March 22nd, '55.

* * * * *

Q. Oh, excuse me. I have it straight. Just in a general way what were the nature of these conferences you were holding over this period of months with Mr. Homer K. Jones?

A Well, that particular one was where we were comparing figures. We were comparing our net worth results and other figures used in arriving at the defendant and his wife's corrected net income.

Q. I see. During this March conference with Mr. Homer K. Jones, did you have occasion to copy down some of his figures he had been working up over this period of months as to the defendant's net worth, as to his cash on hand, and as to his other assets?

451 A. Well, we compared all of our figures. He showed me all the figures he had, and I did likewise. I made notes of his figures, and particularly where there was any difference in figures.

Q. All right, now, when was the next conference held?

A. Well, there was another informal talk with Mr. Jones, and there were several of that nature, but I will skip over that.

On April 15, '55, Mr. Jones furnished me—, I had some little meeting with him,—he furnished me a lot of Mrs. Epstein's cancelled checks for the year 1949.

MR. HODGES: I see.

A. (Continuing) On June 21, '55, there was a conference held in Nashville and new powers of attorney submitted authorizing Mr. Jones and also Attorney Eugene Bernstein to represent Mr. Epstein and his wife.

Q. This was in June, '55?

A. June 21st.

* * * * *

452 Q. Now, what happened after that? Let's go on, take it all,—I want the chronology.

A. Well, that conference was actually arranged for the benefit of the defendant, giving him the opportunity to offer any further information or explanation that he desired. However, since he did not appear at that meeting, and it was my understanding from Mr. Jones and Mr. Bernstein that he was too sick to appear at the meeting—.

MR. HODGES: Yes.

A. (Continuing)—Then we arranged another conference in order that he be given a further opportunity to attend a meeting, if he wanted to, and such a conference did take place on July 14th, '55.

MR. HODGES: Yes.

A. (Continuing) Now, new powers of attorney were submitted in the case that this authorized Mr. Jones and Mr. Bernstein and also Mr. William Gerber to represent Mr. and Mrs. Epstein.

* * * * *

456 Q. Were any more conferences held after that July 21st conference in '55?

A. Yes, there were, as a result of what occurred in that July 14th, '55, in Nashville,—Mr. Epstein was there, and he did furnish information.

MR. HODGES: I see.

A. (Continuing) I know he made statements—

MR. HODGES: I said 21st. I meant 14th.

A. (Continuing) And that statement was, or his explanations were taken down by a stenographer. They were translated and typed, and the typed statement with copies were sent to me here in order to give him the opportunity or let him read it over, if he desired, and if he wanted to sign it we would give him a copy, and if he did not want to sign it, we wouldn't give him a copy, which is another one of our rules. And in that connection, Mr. Gerber and Mr. Bernstein, and Mr. Jones, and also I think Mr. Deutsch was in on some of this.

* * * * *

457 Q. Wait a minute. You are talking about conference that was held after the conference of July 14th, aren't you?

A. That is correct.

Q. What date was that subsequent to this you are talking about, now?

A. That takes place on September 8th and 9th, 1955.

Q. All right. What was the purpose of this conference?

458 A. The purpose of that conference was to afford Mr. Epstein an opportunity to read his statement, make any corrections, such as typographical errors and ordinary matters of that type, and sign it and give him a copy of it.

Q. And this is the statement that was taken down I

believe you stated at the July 14, '55, meeting as what he said at that time?

A. That is correct.

Q. All right, what happened then? Go ahead.

A. The attorneys, along with their accountants, do come to my office in response to telephone call that I made to one of them letting them know the statement was there, and I gave them the statement for their study and examination, and Mr. Epstein was not with them, —they read the statement, and—

Q. Who were the attorneys who came to your office? I did not understand you to say.

A. All right, Mr. Bernstein, Mr. Gerber, and Deutsch, and Mr. Jones.

* * * * * *

459 A. But anyway, he did not sign the statement. The whole substance was they wanted to change so much in there that was not error; it was wordings and statements that Mr. Epstein had said.

* * * * * *

462 Q. Now, let's start back, now that we have got the chronological picture here which takes up about ten months, —start back at the beginning conference back in November, '54, that you had with Mr. Homer K. Jones, and tell us what happened at that conference.

A. Well, the November conference was with Mr. Jones and Mr. Epstein.

* * * * * *

465 A. (Continuing)—Of a conference with Mr. William Epstein and counsel in room 212 Falls Building, Memphis, on Friday afternoon, November 19th, starting on or about two P.M. Present at this meeting were Mr. William Epstein, Mr. Homer K. Jones, C. P. A., and Mr. W. C.

Summers, public accountant employed by Mr. Jones, Revenue Agent Hunter Raines, and myself. After the usual preliminary introductory remarks and conversation, I told him—, which is Mr. Epstein, —that his income tax returns for the years '48 through '52, along with information assembled by Revenue Agent Cameron D. Huddleston, had been assigned me for further study in order to ascertain whether or not both criminal and civil violations were involved. —In order to ascertain—, well, let's see, —were
467 involved in connection with these tax returns. I also told him and explained in detail his rights provided by the Fifth Amendment of the Constitution, that he did not have to furnish any values on this thing or do anything he did not want to at this meeting or any other time, and that he had a perfect right to refuse to answer any questions or furnish any explanations, and that it was legally proper for him to get up and walk out of the meeting without saying anything, if he wanted to.

* * * * *

468 The meeting at this point was mostly questions by Mr. Jones and Mr. Epstein of me, and in answering their questions I also asked Mr. Epstein certain questions.

The following answers of his are recorded in the ensuing language:

Mr. Epstein said he did not know why he had to go over this matter again, as Mr. Huddleston had looked at his records and dealt with him considerably about his tax returns filed jointly with Mrs. Epstein. I told him that the information assembled by Mr. Huddleston in that connection, supplemented with other data accumulated substantial variance in earnings realized during the period '48 through '52 over that reported jointly with his wife during the period.

I also told him that there was no secret about the information that I had or how the information was obtained, and that I would be glad to put all my cards on the table, because there was no intention on my part to misrepresent the possibility of criminal violations being involved.

He said that he would like to know how I could figure he had any more money than had been reported, and he did not believe it was possible for me to do that.

468-a We discussed the type records maintained for his pawn and loan business, the memorandum records about rental and other activities, and due to the incompleteness of those records that the combined net income of both Mr. Epstein and his wife had been arrived at on the basis of increase in net worth by comparison of reported net worth. He understood what that meant, because we talked about this subject, and the theory—.

* * * * *

471 A. (Continuing) We discussed ascertaining the combined wealth of Mr. Epstein and Mrs. Epstein as of the beginning of '48, and then determining the increase in that wealth at the end of 1948, and each of the years through 1952, and it was agreed at the meeting, particularly with Mr. Jones and Mr. Summers, that that way of arriving at his corrected income was the best means available to me on them.

Q. Now, just so there is no misunderstanding here, Mr. Homer K. Jones agreed that this net worth method of arriving at income was the best method to be used under all the circumstances here, that is, the condition of the defendant's books, is that correct?

A. That is correct.

Q. All right, go ahead.

A. I told him that his combined wealth, based on the information that I had available at that time, and including a close study there of the income tax returns, that his wealth at the beginning of '48 was somewhere close to two hundred thousand dollars.

• • • • • •

472 A. He stated that he did not believe his net worth was anywhere near that big, or combined net worth of he and Mrs. Epstein was anywhere near that big at the beginning of '48.

Q. You say "he"; who do you mean?

A. Mr. Epstein.

MR. HODGES: All right.

A. (Continuing) He said I must have used some inflated financial statements he had furnished the Manhattan Branch of the U. P. Bank.

Q. Inflated financial statements?

• • • • • •

473 A. (Continuing) I told him that I was not using any financial statements of the Manhattan Branch of the U. P. Bank in computing his net worth the beginning of 1948, and that the figures I used were based on third party records, and they were based on cost, and not any inflated figures such as he had reference to, as real estate that might have cost ten thousand dollars but he may have valued at fifteen due to the fair market value.

• • • • • •

474 Q. Mr. Norris, state what figure you used in his real estate there when you worked up this net worth. You stated that you worked it up from third party sources.

What figure did you use in valuing real estate of the 475 defendant, William Epstein?

A. Well, I used cost figures on everything.

MR. HODGES: I see. All right, that is what I want to get clear. All right, go ahead.

A. Well, at this point Mr. Jones kept insisting to Mr. Epstein that what he meant to say; that his net worth was bigger, instead of less than two hundred thousand dollars.

Q. This was Mr. Jones, now, Homer K. Jones, you are talking about, who said this?

A. Yes, sir.

* * * * * *

476 A. (Continuing) I told him that, based on the tentative figures, his combined net worth the end of '52 had increased approximately one hundred seventy-five thousand dollars, to somewhere near three hundred seventy-five thousand dollars or three hundred eighty thousand dollars, and that when you supplement that increase in net worth with other expenditures of a non-deductible nature that cannot be deducted on their tax return, such as Federal income tax, life insurance, living expenses, and items of that nature, that their correct income—.

Q. That type items that you are enumerating now are items that could reflect income, but would of necessity not be reflected in any net worth, so they would be added to any increase in net worth, is that correct?

A. Yes.

Q. All right, go ahead.

A. I said, after doing that, that would reach approximately three hundred twenty-five thousand dollars. That is, that was my figure at that time of their corrected earnings during '48 through '52.

MR. HODGES: Sure.

A. (Continuing) I pointed out that they had only reported on hundred ten thousand dollars, and that that substantial difference was the reason that I was looking into the tax returns, that the unreported portion was so

478 great they indicated a variance between the corrected income figures that I had arrived at at that time.

MR. HODGES: Sure.

A. (Continuing)—Compared with the returns, and that that difference, which approximated two hundred thousand dollars, that that was the main reason that I was investigating his income tax returns and dealing with him in that conference.

* * * * *

479 A. (Continuing) Mr. Summers agreed that Mr. Epstein's records were not adequate, were not sufficient to prepare a correct income tax return, because they couldn't be verified; he couldn't verify the information on the returns, could not verify sales, he could not verify expenditures made in currency; there was no way to determine whether they had been made or not made; no way to tell whether information was on there or not on there in the books.

Mr. Epstein also said that there was no way to verify sales reported, mostly receipts of currency, and that purchases of the pawn and loan business or the money received from various customers was in the form of cash or currency.

I told him that was one of the main reasons why it was
480 necessary to resort to the net worth method and verify his tax returns and in determining corrected net income, so that is all right.

Q. In other words, the main reason you felt you had to do it this way to substantiate it, because, as you say, all his receipts were cash and most of the payment for merchandise was in the form of cash?

A. That is correct.

MR. HODGES: All right.

A. (Continuing) And could not be verified as to what is in the books.

MR. HODGES: All right, I see. Go ahead.

A. (Continuing) Some of the items on my computation at that time were checked with Mr. Epstein. He was very interested in my figures. He told me he only had three bank accounts at the Manhattan Branch, other than one at the First National Bank for a short while which has no bearing particularly on this matter.

We talked about Treasury bonds, amounts, other type bonds. We went over Investors Syndicate contracts and Fairchild Engine Corporation stock, various other assets of his, to see if he found anything wrong with any of the figures or any of the cost amounts that I had assigned to those various assets, and also some liabilities.

* * * * *

481 I told him that it would be necessary for me to talk to various people, —some of them would be relatives of his, and I wanted to tell him before I did it. I did not want him to be hearing it from various people where it would appear that I was trying to do something unfair or slipping around his back. I wanted him to know that I would have to do that.

* * * * *

482 A. He was asked about two per cent sales tax listed as a deduction on page 3 of his tax return and how that was arrived at, and he said he and Mr. Summers just estimated that figure, based on expenditures, that he spent a lot of money for automobiles and other items subject to sales tax.

I pointed out that there were two hundred ninety dollars deducted for sales tax in '48 through '51, and that amount of sales tax would have been based upon fourteen

thousand five hundred dollars, and that he claimed three hundred dollars sales tax.

* * * * *

483 Q. Fourteen thousand five hundred dollars in '49, and the same figure in '50, '51, and '52?

A. It would have been for '48, '49, '50, and '51.

* * * * *

486 A. Well, there are quite a few items that are not subject to the two per cent sales tax. That is, expenditures of a personal type, services, and I think—, I dont think drugs and any type service would be subject.

* * * * *

488 Q. All right. Now, how many people were in the household? Did Mr. Epstein tell you his household, in addition to these at least two servants, or possibly three?

A. Well, there were Mr. and Mrs. Epstein and his son, his daughter, and up until sometime I think the middle of '52 there was J. P. Kirschner residing there with them. I think that is all.

Q. Well, that is five people and two or three servants in parts of the years, —four people and two or three servants the remaining years covered by the indictment?

A. There was two or three servants; there was always three.

Q. But living on the premises, at least two, maybe three living on the premises?

A. Yes, sir.

* * * * *

489 Q. All right, what figures did you show him, specifically? That is what I am interested in.

A. Well, anyway, I asked him if he was contending that this two hundred something thousand dollars differ-

ence over and above reported income was coming from prior accumulations or money he had already made and saved in prior years, and if it was in his possession at the close of '47. And he says he did have some accumulation of currency that he kept in the safe at his place of business and that he spent during this period. He said it was a
490 practice for him to keep sums of money on hand for business and personal reasons. I asked him about how big those sums would reach. He said he did not know exactly, but would have ten, —fifteen, —twenty thousand dollars in cash on hand in such safe.

I asked him how much cash he had on hand at t' ıt date, which would have been November 19, 1954. He said he did not know, he hadn't counted it lately. I asked him how much he had the last time he counted it. He said he did not remember, he guessed somewhere six or seven thousand dollars.

We talked about gifts, inheritances, loans, and items of that type, and he said that he never did receive any or any form of money.

Q. Sure. As I understand it, he said he never did receive any wealth in any form? Did you say in the form of gifts or inheritance?

A. From relatives in any form, gift, or inheritance or loans, that were not repaid, and that the money he spent for various things stated, except from loans, represented the earnings for he and his wife, or savings they had accumulated in prior years.

* * * * *

491 A. (Continuing) We talked about his stepfather-in-law, J. P. Kirschner. He said he borrowed money from J. P. Kirschner, that he sometimes borrowed for or ten thousand dollars from J. P. Kirschner, but it was always

repaid. He told me about getting some inventory and fixtures from Mr. Kirschner in '49 valued at some twenty-seven thousand dollars. He said it cost him a thousand dollars.

* * * * *

Q. In other words, Mr. Epstein's wife—, what was the exact relationship? Do you have the exact relationship as to how he was his father-in-law?

A. Well, he was Mrs. Epstein's stepfather.

* * * * *

492 A. Well, I asked him—, talked to him about Mr. Kirschner, because I knew of the J. P. Kirschner Sales Store; I knew about the tax returns being filed for some thirteen years in the name of J. P. Kirschner; I knew that Mr. Kirschner was dead.

* * * * *

Q. Where are these buildings located?

A. These buildings are located side by side on Beale Street.

* * * * *

496 A. And the impression I got from him, that the Kischner Store was a separate business altogether from his business.

* * * * *

TESTIMONY OF JULIUS MASON

DIRECT EXAMINATION
BY MR. VADEN:

* * * * *

500 Q. Julius, I will ask you whether or not back in 1948 you had occasion to make a loan of about five thousand dollars through Mr. William Epstein?

A. Yes, sir.

Q. And whether or not you gave some security on some property that you owned?

A. Yes, sir, he gave me a loan on my property.

* * * * *

Q. (Continuing)—Some schedules showing you paid that property out. Did you later borrow some more money from him in '49? If so, how much?

A. Two thousand.

Q. So you got one schedule five thousand dollars, and one two thousand loan?

A. Yes.

Q. Five thousand at $55.52,—two thousand, $24.02?

A. $24.02, yes. sir.

Q. Are the payments pretty well up to date?

A. Yes, sir, they are.

* * * * *

TESTIMONY OF HUBERT A. NORRIS

DIRECT EXAMINATION (FURTHER)
BY MR. HODGES:

* * * * *

505 Q. Prior to the time of the November of '54 conference, I believe you stated that Mr. Homer K. Jones said he was going to get up some figures for the purpose of comparing with you some cash figures, and you have already stated you told him your cash figures at that time, told him and Mr. Epstein together, and tell us whether or not Mr. Homer K. Jones ever got you up any cash figures different from the ones you showed him at the November of '54 conference?

A. The figures that Mr. Jones showed me pertaining to things other than cash, pertaining to assets and liabilities, to the assets and liabilities, was almost identical with

mine for the years under indictment. For '49 he showed the defendant as having seventeen thousand five hundred dollars cash on hand—.

Q. And you had showed him how much, now?

A. Well, the same figure, was the figure that I had shown him.

MR. HODGES: I See. Go ahead.

A. (Continuing)—But it was the same figure that I had already arrived at. The other figures, speaking generally, were identical or very close to mine.

Now, during the ensuing four years on to the end of
506 '52, Mr. Jones' figures showed eighteen thousand dollars cash on hand, which amounted to a five hundred dollar increase during the four year period under indictment. My figures showed sixteen thousand dollars cash on hand, which was a reduction of cash on hand of some thousand—.

Q. But you said seventeen thousand five starting out, and sixteen at the end, so it showed fifteen hundred dollars deducted or decrease over the four-year period, and his had shown five hundred dollars increase over the four-year period of the indictment, is that correct?

A. Yes, sir.

* * * * *

507 Q. This is when Mr. Jones and Mr. Bernstein and Mr. Gerber and Mr. Deutsch were in there that this one hundred sixty-eight thousand dollars cash on hand came out, is that what you are saying?

A. Yes, that the cash on hand had increased by that date to one hundred sixty-eight thousand dollars in his figures.

Q. Well, up to —during that period tell us whether

or not you had made more than—, hadn't you made several comparisons with Mr. Jones?

A. I made—, well, Mr. Jones didn't have any figures at the first meeting with the defendant. I did spend two days with him comparing our figures. That is along in March, I believe, 21st and 22nd of '55. Then the next time I have an opportunity of seeing Mr. Jones' figures on June 21, '55, at a conference in Nashville, that he submits some figures and computations around at that time, his figures had jumed up to one hundred sixty-eight t[illegible]usand dollars,

and the same figures were again covered or embodied
508 in the explanations of the defendant on July 14, '55.

Q. In other words, then, in March, '55, he had beginning cash on hand seventeen five, roughly, —June, '55 it jumps up to one hundred sixty-eight thousand dollars, is that what you are telling us?

A. That is the way his figures showed.

Q. From November of '54, when it began, to March, the seventeen five had changed and just jumps from seventeen five to one hundred sixty-eight thousand dollars, is that what you are telling us?

A. Well, in November, '54, Mr. Jones did not have any figures. Now, Mr. Epstein told me at that time that the most cash he had was twenty-five or a little over.

* * * * *

512 Q. Explain briefly what records you examined, and whether or not these records you saw were sufficiently complete to determine the defendant's income.

A. Well, I have seen some of those records that they introduced here the other day.

MR. HODGES: Yes, sir.

A. (Continuing)—And I saw those previously. Those were the ones that Agent Huddleston made an extensive

study of. I saw Mr. Epstein's cancelled checks for each of the years under indictment. And I also saw Mrs. Epstein's cancelled checks for 1949, along with bank statements and records relating to that bank account.

That is generally all of the records that I spent any appreciable time on.

Q. Well, did you use any other information supplementing the books and records to determine income?

A. Yes, I used information that was reflected in his tax returns that I was able to verify, and I used his inventory, information reflected on the return as to the merchandise inventory. Most of the other information was obtained from various third parties.

* * * * *

521 Q. Mr. Norris, explain briefly just what the net worth expenditure method is. We have gone into it briefly, but let's go into it a little more in detail, and as to how it is used in determining a person's net income for a particular year or period of time.

A. Well, it is a means of reconstructing a person's earnings within a given year or period. You first, for example, would ascertain or determine what a person's net worth at the beginning of a year—, that is, you would arrive—, ascertain all of his assets and his liabilities, and the difference would be his net worth or wealth at the beginning of a year. Then you do the same thing at the end of the year, and that is after he has operated his business and paid his business expenses and paid his purchases and all business costs have been handled during the year, and at the end of the year you again determine his assets and his liabilities and his net worth. If it is greater at the end of a year, well, naturally he is worth more at the end of the
522 year than he was worth at the beginning. You then

have his increase in net worth within that year. You add to that increase in net worth money that he has spent or expenditures of a personal nature he spent that are not deductible for tax purposes, such as payment of Federal income tax, life insurance payments, gifts to anybody he wants to, —gifts to relatives, or living expenses. Then you add those type expenditures to his increase in net worth, and you will arrive at—, and at that same point, if he received any loans, and if he received any gifts within the year, you would subtract it, and then your net result would be corrected earnings within the year. And I might state that it would be the minimum corrected earnings, because you are never able to ascertain all of a man's personal expenditures.

Q. But that is the way, then, of arriving at a man's minimum net income, that is, by adding his increase to net worth that occurred during the year, adding to these expenditures that are not reflected in net worth, such as payment of income tax, living expenses, life insurance premiums, and matters of that kind—.

A. And also subtracting any non-taxable income he might have received.

523 Q. Sure, like gift or inheritance, and things of that nature?

A. Yes.

Q. Sure. Did you prepare by this net worth method some computations reflecting net income realized by Mr. and Mrs. Epstein during each of the calendar years '49 through '52?

A. Yes.

Q. Do you have—, well, are the results of that computation identical to the income figure specified in the indictment for each of the four counts?

A. Yes, sir.

Q. Were you requested by our office to prepare a chart setting out the income specified in the indictment?

A. I did prepare such a chart.

Q. Do you have the chart?

A. Yes, sir, there.

* * * * *

524 THE COURT: Mr. Norris, what they are inspecting at this time is explanatory of your testimony in this case, is that what it is?

525 A. It is based strictly on the indictment figures.

THE COURT: It is based strictly on the indictment figures?

A. My testimony would explain those figures on there, though.

THE COURT: I might explain to the jury at this time that this blown-up summary, so to speak, is admitted only for the assistance and convenience of you jurors in considering the evidence which it purports to summarize, you understand, and it is for that purpose that these so-called blown-up summaries are submitted. They are not evidence themselves, you understand. But, as I say, they are admitted in evidence only for your assistance and your convenience in considering the evidence which has gone before in this case, and which this summary purports to summarize, you understand.

* * * * *

531 THE COURT: And this chart that is offered at this time is admitted under the same conditions as the other chart, gentlemen, so that you will fully understand.

* * * * *

532 THE COURT: Admission of these so-called blown-up computations or summaries made by the witness are competent and admitted in evidence, as I have explained to you, for your assistance and your convenience in considering the evidence on which they are based.

Of course, if there is no evidence to support them, they are not worth anything to you. They are merely explanatory, as I say, of the evidence which has gone before. It is for your convenience and your assistance in understanding this case and in arriving at the facts about it that they are admitted in evidence.

So keep that in mind. There are several of them to come. And that is the purpose for which they are used, and the only purpose.

* * * * *

533 Q. Now, Mr. Norris, look at Exhibit Number 4 and explain that chart to us.

A. Well, this is the tax computations. These figures over here represent the tax reflected on the return filed for these years. For these years, this is the tax computed on the corrected income for each of these years, according to the indictment. And this is the additional resulting from the one hundred forty-six thousand dollars unreported income shown on the other chart.

And for 1949, the return showed his tax $4,278.96. The indictment charges that it should have been $22,844.03, or an understatement of $18,565.07.

For 1950, the return showed income tax of $11,225.82. The indictment alleged it should have been $26,874.35, or an understatement of $15,648.53.

In 1951, the return showed $3,866.31 tax. It was corrected to $32,303.39, or an understatement of $28,437.08.

In 1952, the return showed tax of $3,492.62. That was
534 corrected to $14,846.17, or additional tax of $11,353.55.

The total taxes paid or reflected on the returns for these four years was $22,863.71. It was corrected to $96,867.94, or additional taxes of $74,004.23.

Q. Mr. Norris, you have computed, based on taxes and income increase in net worth, that shows how the income for each of the four years for defendant and his wife was computed, —that is '49, '50, '51 and '52—?

A. Yes, sir.

* * * * *

538 Q. Mr. Norris, just start out and explain briefly what makes up this chart, and how it was used to arrive at corrected net income as compared to net income re-
539 ported in the return.

* * * * *

A. I would like to state first that the figures and information reflected on this chart have in the main been testified to—.

* * * * *

541 THE COURT: Are they figures you are proposing to fill in at this time?

A. I am going to show that the evidence has already
542 been introduced to support those figures. They referred to them on defendant's income tax returns and other records already in evidence.

THE COURT: That objection is overruled, then.

* * * * *

543 A. (Continuing) This is a reconstruction, or practically figures a reconstruction of Mr. and Mrs. Epstein's net income during the four years under indictment. These are the figures embodied in arriving at the net income figures for these years.

* * * * *

A. (Continuing) That is, to arrive at a person's increase in net worth at the beginning or end of a year, you have to ascertain their net worth at the beginning of that year or at the end of the prior year. Therefore, the
544 year '48 there appears up here because this information is compiled as of December 31st, 1948, which is the same thing as saying that it is the first of '49. So all of these figures across here represents assets, liabilities, and other figures as of December 31st, 1948, and 1949, '50, '51 and '52, and the change during the period. I will explain that more later.

* * * * *

545 THE COURT: Mr. Norris, the figures for '48,—is that for the entire year?

A. Those figures are at the close of '48. That is the starting point to determine what the increase for the year '49 was.

* * * * *

546 THE COURT: (Continuing)—It is necessary to make a start on this so-called net worth method.

* * * * *

A. (Continuing) It would have been on the early part of the morning, January 1, '49.

This represents computations as to the cash on hand. It is an asset item. Cash on hand at the close of 1948 was $20,000.00. At the close of 1949 was $17,500.00. At the close of 1950 it was $17,000.00. At the close of 1951, $16,524.18.

At the close of 1952 it was $16,000.00. That was a de-
547 crease during the period of $4,000.0 in this cash on hand funds. I come back later and testify how we arrive at the cash figures.

Q. Work through the whole chart, explain it, then we will go back through the details. I want to show—.

A. This says cash in bank. That is the amount—, that is the bank balance in the account of Mr. and Mrs. Epstein. They had more than one account at the close of 1948. At that date, the total was $6,183.51. It dropped down to $4,179.41 there by the close of '49. In '50 it was $7,164.69. At the end of the following year, '51, it was $12,029.86. In '52 the bank balance was, at the close of the year, dropped to $4,896.00.

Now, the change in their bank balances at the end of these years, that is, from 1948 to the close of 1952, was a decrease of $1,287.51.

Q. Two eighty-seven what?

A. $1,287.51. The next asset is headed up U. S. Government bonds. That includes some savings bonds that he had on hand at the beginning of the year. There was no change in there. It was the cost figure of the savings bonds. He did not buy any more. That is War Savings Bonds, Series "E," "G" bonds, and they were I think the sav-
ings bonds. I have details as to all this, but there was
548 very little change in this during the entire period. It also includes some regular Treasury bonds of larger amounts. I have combined it into this one asset called U. S. Treasury bonds.

At the close of 1948 he had $40,392.79. Rather, that was the cost of those bonds. 1949, the end of that year, it increased to $41,030.29. 1950, increased to $46,730.29. Increased

a little more in 1951, to $47,492.79. Increased some more in 1952, $48,255.29. Most of that increase results from interest, unclipped coupons on those Treasury bonds.

During this period his investment in U. S. Government bonds increased from $40,392.79 to $48,255.79, or a total increase of $7,862.50 for that period.

Now, he owns stock and securities, and they are grouped. That is several type assets. That is stock he owns in corporations and investments of that type. They are grouped here under the heading stock and securities.

At the close of '48 he had invested $31,229.10. '49, $33,131.73. '50, it was $38,750.13. Increased to $42,268.62 by the end of '51. And it decreased in '52 to $36,708.66.
549 There was an over-all increase in that type asset of $5,479.56. He and his wife had investments in partnerships and joint ventures, —various—, that is, several of them. Their investments at the end of '48 in partnerships and joint ventures aggregated $34,397.43. At the end of '49, increased to $43,805.20. It moved to $57,288.30 by the close of '50. Further increase in '51 to $58,865.24. At the close of '52 to $149,926.25.

The investments in partnerships and joint ventures during the four year period under indictment was $115,528.82.

Mr. Epstein had some merchandise inventory for his pawn, loan and sales business. At the close of '48 the inventory was $72,509.50. At the close of '49, $124,986.45. '50, $132,250.75. By the end of '51, $148,278.60.

'52 he did not have any merchandise inventory at all owned individually by himself because his business had been converted into or changed into a partnership with a

cousin named Maynard Epstein. That is the reason his investment in partnerships increased something over one hundred thousand dollars, —almost one hundred thousand dollars in the year '52. That move caused this asset there to move up to here, and some remainder of it went into
550 notes, because it had not all been paid for.

* * * * *

Real estate and improvements to real estate. These still are cost figures. He owned real estate—, he and his wife costing $40,000.00 at the close of '48. It was unchanged at the end of 1949. By '50, it was $49,511.31. It increased in '51 to $107,450.48. By the end of '52 it increased to $146,966.93.

Their combined investments in real estate and improve-
551 ments thereto during the four year period totalled $106,966.93.

* * * * *

A. Notes and loans receivable. At the close of 1948 he had $22,297.45, notes and loans receivable. $19,281.13 at the end of '49. $17,364.90 at the end of '50. $47,173.85 at the end of '51. $87,197.67 at the end of 1952.

Total increase in receivables, $64,894.20. Most of that pertains to notes or mortgages, —notes secured by mortgages on real estate he had sold, and some thirty thousand dollars still owed him when he sold a third of his merchandise inventory at the beginning of this year.

* * * * *

552 Now, the sum of those figures represent the total of his assets for each of those five years. Now, the assets at the close of '48, as listed here, amount to $267,606.78.

At the close of '49 they were $325,986.21. At the end of '50 they amounted to $367,557.37. '51, the end of that year,

it was $474,680.63. By the end of '52 it amounted to $491,541.78.

The increase in his assets from the end of '48 to the end of 1952 was $223,935.00.

Now, during those same years, Mr. and Mrs. Epstein
553 had liabilities. This is a list of their liabilities.

* * * * * *

556 A. (Continuing) His total liabilities for each of these years, or at the close of these five years, starting with the '48, amounted to $20,767.15, $26,548.96, $20,310.21,
557 $88,986.42, $88,276.91. Increase in his liabilities during this four year period, $67,509.76.

Now, at this point, to arrive at his net worth, you subtract his liabilities from his assets, and the result is called net worth. And his net worth at the close of 1948—his net worth was $246,839.63. At the end of '49, it was $299,437.25. By the end of '50 it was $347,247.16. 1951, $385,694.21. And by December 31, '52, $403,264.87. That constituted an increase from the first of '49 to the last of '52 of $156,425.24.

The next step is determining how much increase was involved each year. You subtract his net worth the close of '49—, rather, you subtract from his net worth at the close of '49 the net worth at the beginning of the year which is involved.

In 1949 he had $299,437.25 net worth. At the beginning of that year it was $246,839.63. The difference is $52,597.62.

By making the same subtraction each year on that, —take this from that, —his increase in '50 was $47,809.91. The increase in '51 was $38,447.05. For '52 it was $17,570.66.

558 The aggregate of these increases for each of the four years amounted to $156,425.24, which is the same figure I mentioned just previously, —that last, —that.

Then at that point you have computed his net worth. An increase occurred in his net worth each of those four years.

Then you take into consideration expenditures of a personal nature, or expenditures that are not deductible for any reason, as far as income taxes or income tax returns are concerned, and also those expenditures pertaining to—, rather, that do not pertain to any of the assets or liabilities.

None of these expenditures were paid on acquiring any assets or reducing any liability, or paying off any loan. They are personal expenditures. They are expenditures that are not reflected in any of these figures I have already recited here.

Now, those expenditures of a personal nature naturally originated from some source. The money came from some source. The indictment alleges that it came from—, that it was earned currently during these four years.

* * * * *

559 A. (Continuing) These taxes reported as paid, they are actual figures for the taxes that were paid within these calendar years. And the tax return figures for '50, the figures on the return in '49 may be different. This is—, he doesn't mean that he has paid it, because the return itself was filed for three or four months of the next year. But these are payments made on income taxes, irrespective
560 of what returns it pertains to, that were made within the calendar year, from the payments.

Q. In other words, that first figure, '49, is not the same tax that he paid on his income for the calendar year '49, but that is the amount of money the defendant paid to the Internal Revenue within the calendar year '49?

A. That is correct.

Q. So the last payment on the '49 return may have been made in '50, consequently it would be included in the next year's chart, is that right?

A. Yes.

* * * * *

Q. Read the totals. I want you to read the totals.

561 A. During these four years, Mr. and Mrs. Epstein paid $22,900.17 Federal income tax.

Life insurance premiums paid by Mr. Epstein during those same years totaled $9,448.84.

Salaries to domestic help paid during those four years totalled $10,411.00.

He purchased two automobiles during that period that cost $5,183.43.

Personal living expenses, based on an analysis of cancelled checks of their two checking accounts amounted to $13,906.08 during 1949, $8,952.63 during 1950, $14,089.89 in 1951, and $12,920.94 in 1952, or a total of $49,869.54 during the four years.

* * * * *

564 A. Now, he was entitled to certain eliminations out of his increase to net worth, —his non-taxable gains. He had some gains involved that were not taxable. We eliminated the non-taxable capital gains that he had, which amounted to $3,366.64 in the four year period.

Now, here is some inventory received from the Kirschner Store, and it constitutes elimination of $16,721.10 for the year 1949, and that is the only year involved on it.

Now, included in his totals up here is a note of some ten thousand dollars given Mr. Epstein by Mr. Kirschner in connection with some inventory, or inventory transaction back in 1937. It will be explained in detail over further.

But he received during this year twenty-seven thousand dollars inventory from Mr. Kirschner, along with some fixtures, and said he only paid a thousand dollars for it. Instead of eliminating all of the twenty-seven thousand dollars cost of the inventory, I took ten thousand and some odd dollars out of his assets by dropping off the note that he held, and the remainder to make up the twenty-seven thousand was $16,721.10. We then went to deduct that from this computation. In other words, we eliminated the entire twenty-seven thousand from these figures, in order not to tax him at all on the twenty-seven thousand, since he said he got it for nothing, and it was handled in the way
565 most favorable to the defendant.

Then, when you consider these personal expenditures along with these few eliminations I have here, you would arrive at corrected net income.

For '49 it was $60,633.24. And in '50, $66,358.55. '51 was $69,325.84. '52, it was $38,792.41. Now, the aggregate of the four years was $235,110.04.

Now, these figures, now, are getting down and agreeing with the same figures in the indictment as corrected net income.

Now, Mr. Epstein and Mrs. Epstein reported during these four years $88,169.79. Now, this difference between what they reported and the corrected net income resulting there from this computation represents the alleged net income under-reported as alleged in each of the years, totalling $146,940.25 for the four year period.

* * * * * *

571 A. All these figures are based on the cash on hand and in some instances in the bank reflected on financial statements furnished by Mr. Epstein. The year in

572 which he did not furnish a statement was the approximate difference between every other year's statement.

Q. You state they were in agreement up in the spring of '55 and it was only in June or July that the defendant's figures ballooned way up?

A. Well, that is when I realized Mr. Jones had increased his cash on hand, the figures at the beginning period, some one hundred fifty or sixty thousand dollars more.

* * * * * *

585 A. The aggregate of those figures I have been reciting would total the amount for stocks and securities for each of these years across here, a total increase of $7,862.50. That is the wrong line testifying there, —$4,479.56.

Investments in partnerships and joint ventures. Mrs. Epstein has an interest in Lippman's Loan Office. At the close of 1948, her capital account or her investment in that firm, $22,313.71. She did not draw any of the profits realized in the following years, and at the end of 1949 her investment was $25,403.78. At the end of '50, was $29,526.60. The end of '51, $32,509.97. The end of 1952 was $34,916.52.

Park Avenue Restaurant. Mr. Epstein had investment in that concern at the close of '48, $7,843.72. He sold that interest or disposed of it in '49, and he had no further interest in it the remainder of the years.

Vollentine Hills Subdivision. He had an interest in that firm that cost him five thousand dollars at the close of 1948, —1949. It increased to $14,535.17 in '50. It changed to $12,492.29 in '51, and decreased to $10,461.62 in 1952.

His capital invested as partner, Jaffe Dry Goods Store,
586 Osceola, Arkansas, started in 1949, and at the close of that year, $13,401.42. '50 was $13,226.43. It decreased in '51 to $11,862.32. In 1952, it was $11,254.87.

He had an interest in Charjean Homes, —C-h-a-r-j-e-a-n. In fact, both he and his wife did. They invested two thousand dollars in that concern in 1951, and still had that investment at the end of that year. The firm owed them some money over and above the investment at the close of 1952 of $882.49, so that $882.49 is a negative asset figure.

Epstein Loan Office, —this is taken into account when his business was changed into a partnership the first part of 1952. By the end of that year, his interest or his share in the assets of that business, based principally upon inventory, —and it was two-thirds of the inventory, —was $94,185.73. And it appears only at the close of 1952.

Now, the total of those figures that I read would come back to these figures, investments in partnerships and joint ventures, for each of the years.

I think the next item is inventory, William Epstein Pawn and Sales business.

His ending inventory was $72,509.50 in 1948. That figure is possibly the same one here, so that is the only
587 figure involved in that, and would be no need of reading that any more.

The next item is fixtures, William Epstein Pawn and Loan business. Now, that is the only item involved in that.

Then you get down in the real estate, and there are quite a number of figures involved in arriving at his investment. Cost of real estate and improvements to real estate.

He owned three buildings on Beale Street that were purchased prior to the indictment period. One of them cost seven thousand, one cost seventy-five hundred, one cost twelve thousand five hundred. There was no change at all to those three buildings, no increase in cost or no additional

amounts charged for improvements made to those buildings. So there would be no way—, would be the same all through the period.

He purchased a residence at 661 East Drive prior to this period for eleven thousand dollars. His investment or cost of that home the end of '48 was eleven. According to my figures in '49 it was still eleven. In '50 he started improving that real estate. The cost plus improvements by the end of '50, —$16,737.66. By the end of '51, it was $39,196.61. It did not change any by the end of '49 from that period.

588 He and H. H. Jeter purchased four acres or more of real estate on Highway 51 South in 1950. Mr. Epstein's share of the cost of that was $3,673.65. He also paid four hundred dollars for his share of grading work done on that real estate. So the end of '52, his investment was $4,073.65.

He acquired a duplex on Barton Street in '51, paying by the end of '51 $2,423.64. At the end of '52 he had invested in that building $6,250.31. And he still owned that building at the end of '52.

He also acquired a lot on Turner Street in Memphis in '51 at a cost of $1,287.35, and he still owned that lot at the close of '52.

He bought a duplex on Gold Avenue in 1951. Well, he actually bought a lot and constructed a duplex on it. And the end of '51 his investment for that property was $4,583.15. He sold that piece of property in 1952.

He acquired the property at 1638 Union Avenue in 1951, costing him $7,286.08. And that was the same cost used the end of 1952.

Some of these properties have mortgages, which are handled as liabilities. And on that particular one he
589 had not paid for all—, he had not paid the entire twenty-seven some-odd thousand dollars. He does have a note on that, a mortgage.

He acquired some other property and constructed three duplexes on different addresses on Silverage Street, —S-i-l-v-e-r-a-g-e. Two of these cost him $6,487.98 at the close of '52. And the year '52 is when he spent the money for that property. The third one cost him $6,583.21.

There is another duplex on Wabash Street which he invested in '52 $6,748.84.

Two duplexes on Montgomery Street. In '52 he invested in one $6,782.46, and the same amount to the other one.

* * * * *

A. (Continuing) There is twenty acres of land Mr. Epstein had acquired in Crittenden County, Arkansas, prior to this period at a two hundred thousand dollar cost,
590 and there is no change in that during this period at all. Well, you add those various figures, and here is—, it would come back to this real estate and improvements on there.

The next asset is headed notes and loans receivable. The first one pertains to Mr. Epstein's one-half interest of the $12,162.25 notes given or granted by W. C. Cockerham and wife, West Memphis, Arkansas, that they purchased a piece of real estate over there from Mr. Epstein and Mr. Jeter and they gave a note—, some notes amounting to $12,162.25. One-half of those notes belong to Mr. Epstein. And at the end of '49 the unpaid part—, unpaid portion of his share of those notes was $6,081.13. In 1950 he still held $4,

864.90 of those notes. In 1951, it was $3,648.67. 1952, was $2,432.44.

He loaned Q. & S. Realty Company of Memphis sixty-eight hundred dollars prior to the indictment period. They had not repaid him that money until 1951. That obligation of Q. &.S. Realty Company, which is a receivable of Mr. Epstein, that is money that is owing to him. They owed him six thousand dollars in '51. They owed him thirty-five hundred dollars in 1952.

He sold a one-third interest in his pawn and loan business to Maynard Epstein, effective as of January 1,
591 1952. Sale price based on one third of inventory of Mr. Epstein's business at that date was $41,666.66. Maynard Epstein still owed Mr. William Epstein $31,661.66.

* * * * *

599 Q. Mr. Norris, at the end of yesterday you had computed defendant's corrected net income for the four years involved in the indictment, and stated this is $235,110.04.

Can you show us what the defendant did with that money during the four year period? Do you have another chart that will reflect that?

A. Yes, sir.

* * * * *

606 Q. Mr. Norris, will you show the Court and jury what defendant did with the sum of money, the net income, as recapitulated on the previous chart?

A. This chart is headed disposition of corrected net income per indictment. The figures and information on this chart are derived from the same figures over here. They are just presented in a different manner. Actually, it shows how his corrected net income was applied, or what he did

with his money, with his earnings, along with some nontaxable income involved in these years, and it pertained to the years 1949 through 1952, and these amounts were broken down, or, rather, were grouped for simplicity in presenting this picture as to what he did with his earnings, along with some untaxable money that was spent during this period.

For the year '49 his business investments amounted to $60,343.40 that year. 1950, he invested eighteen—.

* * * * *

A. (Continuing) 1950, he spent $17,356.17 for business investments. It is $40,413.74 in '51. '52 amounted to $8,351.14.

Total during the four year period that are called business investments amount of $127,464.45.

Real estate, —this is the payments, cost of real estate, money he spent for real estate and improvements. Nothing in 1949. $9,411.31 that he spent in 1950. '51, he spent $48,039.17 on real estate. '52, he spent $39,516.45.

He spent a total of $106,966.93 on real estate during this period.

His living expenses, —'49, —these figures are based on 608 study of his cancelled checks and those of Mrs. Epstein, and these figures are based entirely on those cancelled checks, and do not necessarily include all of his personal living expenses. In '49 it was $13,906.08. '50, $8,952.63. '51, $14,089.89. '52, $12,920.96.

Total during the period, $49,869.54.

* * * * *

A. (Continuing) Federal income tax, —he did pay Federal taxes during these years. In '49 he paid $4,986.10. '50, $3,227.36. '51, $11,225.82. In 1952, he paid $3,460.89.

609 Total payment of Federal income tax during this period was $22,900.17.

Life insurance premiums paid each of these years, —'49 was $2,352.76. '50 was $2,369.36. '51, $2,365.36. '52, $2,361.36. Total payment for insurance, life insurance, $9,448.84.

Stocks and bonds acquired, —payments for stocks and bonds, $2,540.13 for '49. '50 was $11,318.40. 1951, $4,281.00. '52 was nothing. Total, $18,139.53 for the period.

Payment to domestic employees. Twenty-five hundred dollars in 1949. Same amount in 1950. $2,265.00 in 1951. $2,759.00 in 1952. Total of payments to domestic help, $10,411.00.

He purchased two automobiles. One of them he bought in 1949, $2,633.43. The other one in 1950, cost $2,550.00. That is a total of $5,183.43.

There is an item here that actually does not represent an expenditure in the true sense, but it does represent increase in his bank balance. He put this much more money in the bank than he withdrew during the year. Therefore, year end balance for the year 1950 increased $2,985.28. The same increase occurring in '51 amounted to $4,865.17. There was no increase for the year '52, or the year 1949.

610 Total increase for those two years mentioned was $7,850.45.

He paid some loans and other obligations. He paid five thousand dollars in 1950 to Manhattan Bank. Nothing in 1951. $4,757.95 in 1952. Or a total of $9,757.95.

He had a capital loss in the year '51. That is actually not an expenditure at all. It is a part of a loss that is not deductible for tax purposes. I listed it here because it is not deductible, and would have the same effect as if he had

spent it for tax purposes. The amount of that portion not deductible for that capital loss was $959.56, and only occurred in the year 1951.

The total expenditures during each of these years, also taking into account the capital loss in '51, or that portion not deductible, —for '49, $89,261.90. In 1950, $66,670.51. 1951 was $138,891.71. '52 was $74,127.73. The total was $368,951.85.

Now, that figure there represents the money that he spent, or the expenditures over and above the cost of operating his business, and over and above his business expenses.

He reported for the year '49, $20,105.62 net income. For the year '50 he reported $37,142.46. The following year was $16,526.59. '52 was $12,395.12. He reported total net income the four years of $88,169.79.

The money that he reported will be subtracted from his total expenditures, along with some non-taxable income. In other words, these figures down here, as stated, they would be grouped on this net worth determination for simplicity of proof in presenting it. They include loans, non-taxable types of income that he is enttiled to, and certain liabilities or deductions.

For the year 1949, it amounted to $28,628.66. For the year 1950, it was $311.96. For the year '51, $69,565.87. '52 was $35,335.32. Total non-taxable income and other items amount of $133,841.61.

The aggregate of those two, —the net income reported plus the non-taxable income, loans, et cetera, for each of these years, —for the year '49 it amounted to $48,734.28. You subtract that from the total expenditures of $89,261.90.

It would leave a difference of $40,527.62 for the year 1949. Now, that is the same figure in the indictment that is alleged unreported net income.

I will continue reading these totals across as to the total of income reported and untaxable income.

612 For 1950, his total, $37,454.42. '51, it was $86,092.46. For '52, $49,730.44.

There was a total for the period of $222,011.60.

Now, when you subtract for each year this sum I specified from the total expenditures, you have the line here.

There is a difference for the year '49 of $40,527.67. For '50, $29,216.09. '51, it is $799.25. It is $52,799.25. For the year '52 it was $24,397.29. Or a total of $146,940.25 that he spent, applied, increased his net worth, or that he used the money for personal reasons over and above the net income reported or over and above non-taxable income.

* * * * *

641 A. (Continuing) Then the years—, talking about the years that he did file and that he did pay some tax and the returns were destroyed, in order to determine what amount of income he reported and what amount of adjusted income he reported, adjusted gross, —we would take the tax table as the basis of the taxes paid, and back up, so to say, and arrive at how much adjusted gross income he would have reported to have paid that amount of tax. So these figures as to certain years in which returns was not filed, they are based on the taxes paid, backed up in there to arrive at the adjusted gross income.

And those are the figures that Mr. Gerber asked in the early part of the trial that I compare any such figures that I had with Mr. Deutsch. I did that. And our figures some years hit to the dollar. He computed the same way, based

on the amount of taxes paid. There was very little difference of any significance between my computations on the years where we arrived at his adjusted gross income
642 per taxes paid, —very little difference between my figures and Mr. Deutsch's figures that I compared with Mr. Deutsch and Mr. Bernstein since this trial has started.

* * * * *

But Mrs. Epstein during those years reported $35,138.18. J. P. Kirschner's tax returns showed income from 1937 to '48 adjusted gross income, one hundred twenty-eight thousand. And that is actually the profits of the sales store, $128,977.98.

643 The total or aggregate income of those three returns and those three people from 1920 up to the close of 1948 amounted to $484,964.66.

My next step was to determine what expenditures—, or what happened to this money.

I know that they paid Federal income taxes totalling $95,121.73 up to the close of 1948. They paid life insurance premiums $33,495.55. Now, this is actually the life insurance premiums paid by Mr. Epstein. These taxes represent the taxes paid by Mr. Epstein, Mrs. Epstein, and also the taxes for the J. P. Kirschner return.

Contributions, amounts expended for contributions, charitable purposes, taxes, et cetera, which are deductible, amount to—, and this is based just on the years for which we were able to obtain the original income tax returns or had access to copies of returns still in the possession of Mr. Jones, —.

Q. In other words, that is a minimum figure, because some of the tax returns had been naturally destroyed by the Bureau, and naturally, the filing records showing the

amount of tax paid would not show the amount claimed for charities, and taxes, and so forth?

644 A. They could have paid more than this for that year.

* * * * *

A. (Continuing) That amount would be $19,144.58.

Servants' salaries, —and that is just the few years prior to 1948, and in arriving at that figure I took into account the testimony of Columbus Nathan and also explanations of Mr. Epstein as to how many such employees were out there and the salaries they were to receive, —this is a minimum figure of $10,500.00 paid to domestic help.

* * * * *

645 Q. That includes his automobiles, furniture in his house, all jewelry bought in that period, or items like that?

646 A. That is right, items we consider personal effects.

MR. HODGES: All right.

A. (Continuing) —From 1920 to the close of '48 that they would have spent.

Living expenses from 1920 to 1948, and based strictly and computed strictly on what Mr. Epstein stated to me they were during this period, some years being as little as five hundred dollars, amount to seventy-two thousand dollars.

His net worth, computed at December 31, '48, was $248,839.63. They certainly had to spend that money to acquire any such net worth at the close of 1948.

To total those disbursements, it amounts to $514,010.90. Or it is $29,046.24 greater than the income, combined income of those three people. And that would mean, according to the chart, it would appear that he spent almost thirty

thousand dollars more than they earned. However, that difference could be attributed to possibly gifts that he might have received, or some other factor. But on reported income—.

Q. But I believe in regard to gifts, —didn't you ask him whether or not he had received any gifts?

A. Yes, sir, he said he had received no gifts of any significance.

* * * * *

649 Q. Will you go over this chart, Mr. Norris, which has just been introduced as an exhibit to your testimony, showing cash on hand per bank statements furnished by defendant, William Epstein, on the various dates as set out there on the chart?

A. These financial statements were discovered and studied in order to corroborate what Mr. Epstein had told me as to the amount of cash on hand he had at various times when I talked with him in November of 1952. He told me that he had ten, fifteen, twenty thousand dollars on hand at various times. He had already told Revenue Agent Huddleston that he may have had—the highest that he may have had on hand at any time was between thirty and forty thousand dollars.

* * * * *

650 A. (Continuing) Statements that he gave the Manhattan Bank from January 1, 1940, up to January 1, 1954, as to cash on hand is shown on this chart, the date of the statement, for the headings here for these dates.

* * * * *

651 I don't show the January 1, 1954, cash on hand on this chart, but it was $15,000.00. And I did use that statement in arriving at the cash on hand at the end of 1952, since that was the next statement that I had to—, that I

used in determining the amount of cash that he would have had on hand at the close of 1952.

• • • • • •

652 Q. Are these all the financial statements furnished a bank you were able to find given by the defendant, William Epstein?

A. Well, that I was able to find, yes, sir.

• • • • • •

654 A. Now, this statement dated or prepared as of December 31, '49. What I wanted to point out on this statement, —his merchandise, —that is an asset, that is merchandise inventory. He has two figures here. One he 655 says loans sixty-five thousand dollars. Now, it is my interpretation that that pertains to loans on pawned articles. In addition, he has other inventory of a merchandise nature of ninety thousand dollars.

Now, I have included the sixty-five thousand dollars there as his assets, which would be a little different, would be that much different from the total assets he lists. And it would also have a bearing upon the net worth. But I did want to point out, for whatever benefit it might help anybody, that the sixty-five thousand dollars loans specified on that financial statement is my interpretation that is the amount of money he has loaned out on pawned articles, and he has the articles, and it is a part of his inventory at that time.

So, then, based on that statement, his assets would be the end of 1949 $334,600.00, less the liabilities of $12,300.00. His net worth would be $322,300.00.

The January 1, 1952, statement, which is exactly two years later, —assets $484,410.32, liabilities of $55,445.86. A lot of that is loans at Manhattan Bank. The net worth, $428,964.46.

656 His assets increased during those two years $149,-810.32. His liabilities increased $43,145.86. His net worth increased $106,664.46 during those two years. And during the same two years he reported net income $48,-499.40. His net worth increased $58,165.06 over and above that he and his wife reported.

* * * * *

659 A. Well, I believe that the jury and the Court already are familiar with what I said as to the discussion we had on November 19, 1954, about cash on hand, that the highest figure he had was twenty thousand dollars; and he did not know how much it was when he last counted it; he did not know how much it was at the time I talked with him, but he thought it was —and I am speaking from memory, —six or eight thousand dollars. But then, the next time I talked with him over at Nashville, —or, rather, the next time that he talked when I was present, he then said that at the beginning of 1948 that he had in his safe twenty-two thousand dollars cash on hand that belonged to him in one pile or one stack in the vault.

* * * * *

662 Q. We have got a signature card here that has been introduced as an exhibit to Davis' testimony from U. P. Bank as to who could cash check on this J. P. Kirschner. Who was authorized to sign checks on the J. P. Kirschner Store account? Or was J. P. Kirschner authorized to draw checks on the J. P. Kirschner Store?

A. According to that signature card, the only person who could withdraw money from the J. P. Kirschner or Kirschner Store account was Mrs. Epstein, —Mrs. Pearl Epstein.

* * * * *

666 Q. In other words, if you add up the inventory listed on the J. P. Kirschner Store, inventory on the return, —add that to the inventory listed on defendant Epstein's tax return, it just about equals the inventory listed on this financial statement which you have reference to which the defendant Epstein over there furnished the Manhattan Branch of the Union Planters Bank? Is that what you are saying?

A. Yes, sir. For instance, as an example, his December 31, 1946, statement to the Manhattan Bank Branch of U. P. Bank showed merchandise inventory $70,000.00, as of the end of 1946. The inventory at that date shown on his 1946 tax return was $38,359.60. The inventory shown on that same date on the J. P. Kirschner tax return was $31,987.50. That makes a total of those two inventories on those two tax returns, $70,347.10, which is only three hundred and some-odd dollars greater than the amount shown on the financial statement.

* * * * *

671 A. (Continuing) And his explanation that I talked with him about this was whether—why wasn't the cash listed on the financial statements, and I tried to explain what he said as the reason it was not listed on his prior years from '49, that he considered that Kirschner may have some claim on the money and he was not fully sure that the money belonged to him, that some relatives might come in and claim the money belonging to Kirschner. However, he had already stated that nobody knew about any such cash at all down there except his wife and son.

Q. Did you ask him specifically who all knew about this large sum of cash there that he claimed was in his safe,

twenty some-odd thousand in his pile, eighty some-odd thousand in the Kirschner pile, and sixty some-odd in
672 his wife's pile?

A. He said that nobody knew about this but his wife and his son and himself.

Q. Was any other member of his family present when he so stated that?

A. His son.

• • • • •

678 Q. Mr. Norris, this morning there was some contention made by defense counsel that some items had not been proven, and involved some stock and some real estate, as to the cost.

I wish you would provide a brief explanation concerning those matters as to what you personally say and what some of the rest of it is based on. Can you do that right now?

A. Yes, sir. I have had opportunity to check through my files some. I did not have time to make a thorough check on that. And I see that most of the items in the real estate, the cost that he had listed on some of his income tax
679 returns for depreciation purposes or when the real estate would be sold, —now the cost that he listed on his returns is just about the same, —there may be a few dollars difference, but very little, if any, difference between the cost that he had listed and the cost that I have.

• • • • •

A. (Continuing) —And the land, costs of the land, we have records already by records introduced as to ownership of land and transfer of that property. We have those records, the State transfer tax and also the Federal tax applicable to such pieces of land, and some testimony as to the land has already been testified to by—

* * * * * *

704 Q. Would you read off there the cost of those pieces of property that this fellow Jameson—, the ones Jameson built for the defendant Epstein?

A. On the Montgomery pieces of property, —one—, 746—748, acquired November 4, '52, the cost for the building, exclusive of land, $5,868.00.

750-752 Montgomery, acquired in November, 1952, for the same cost, $5,868.00.

183-185 Silverage, acquired in June, 1952, cost $5,898.00.

231 and 233 Silverage, acquired in February of '52, at a cost of $5,710.00.

705 235-237 Silverage, acquired in February of 1952, cost of $5,710.00.

The Wabash Street property, acquired November, 1952, cost $5,898.84.

* * * * *

725 Q. Did you receive letter from Bernstein, Snodgrass, Katz and Jacobs, as of February 3, 1955, signed Israel Katz, —this letter?

A. Yes, sir.

* * * * *

726 MR. HODGES: (Reading) "Mr. H. A. Norris, Intelligence Division, Internal Revenue Service, 212 Falls Building, Memphis, Tennessee.

"Dear Mr. Norris:

"In compliance with your request, I am submitting the information as requested by you regarding various holdings of Mr. William Epstein and wife, Pearl Epstein. These figures were taken from books of account,

worksheets, and other records of the companies listed below, which have been and are now in my possession.

"(a) Prescott Company, Inc.:

Cost of stock, acquired February 21, '51—Ten shares, William Epstein, $2,379.33. Ten shares, Pearl Epstein, $2,379.33. Total cost, $4,758.66.

Stock paid for as of December 31, 51, $1,000. Stock
727 paid for as of December 31, '52, $4,758.66.

"(A total of $1,000.00 was paid by William and Pearl Epstein as down payment on this stock on February 21, 1951. The balance of $3,758.66 was paid out of the funds of Charjean Homes, a partnership. All funds of Charjean Homes at this time were obtained from bank loans. This payment was charged to William Epstein's personal account on the partnership books.)

"Loan balances payable to William Epstein—

December 31, '51, $3,500.00.

December 31, '52, $5,500.00.

"(b) Charjean Homes (A Partnership):

Balance in Capital Accounts, William and Pearl Epstein, December 31, '51, $2,000.00. December 31, '52, Deficit—($1,082.49).

"(c) Forrest Park Apartments, Inc.:

The stock certificate book in my possession shows 110 shares of common stock, $100.00 par value, transferred to Mr. William Epstein in April, 1951, certificate No. 8. There were 330 shares of common stock outstanding, at a total book value of $33,000.00.

728 "(d) Vollentine Hills Subdivision (A Partnership):

Balance in Capital Account, William Epstein:

December 31, '47, $5,000.00.

December 31, '48, $5,000.00.

December 31, '49, $5,000.00.

December 31, '50, $14,535.17.
December 31, '51, $12,492.95.
December 31, '52, $10,451.62.

"(e) Hawthorne Builders, Inc.:
Amount of Capital stock, William Epstein:
December 31, '50, $8,750.00.
December 31, '51, None.

"(This corporation was dissolved on March 1, 1951, and assets remaining, Mr. Epstein's share of which amounted to $6,830.88, were transferred to Vollentine Hills Subdivision and credited to his capital account on the partnership books.)

"(f) Lippman's Loan Office (A Partnership).
Balance in Capital Account, Pearl Epstein:
December 31, '47, $17,591.26.
December 31, '48, $22,313.71.
729 December 31, '49, $25,403.78.
December 31, '50, $29,526.70.
December 31, '51, $32,509.97.
December 31, '52, $34,916.52.

"(g) Q & S Realty Company, Inc. Amount of Capital Stock, William Epstein, 125 shares, $100.00 par, acquired April 2, '46—$12,500.00. Notes Payable Balance due William Epstein:
December 31, '50, $6,800.00.
December 31, '51, $6,000.00.
December 31, '52, $3,500.00.

"Yours very truly, Israel Katz."

* * * * *

CROSS-EXAMINATION
BY MR. WILL GERBER:

* * * * *

749 Q. Never did. Did you ever find, Mr. Norris, where he had ever been arrested in his life for the violation

of any regulation concerning his pawn business or violating any statute of any kind in his life? Did you ever find—?

A. There was some information along that line.

Q. Not talking about that. I am asking about—

MR. HODGES: Just a minute. Let him answer.

MR. FITZHUGH: You asked him.

MR. HODGES: Go ahead, Mr. Norris.

A. There was some information obtained that he had been arrested, yes, sir.

Q. Where is the information? We want the information.

A. It is in the morgue of the Commercial Appeal.

• • • • •

831 Q. Mr. Epstein filed a return for all of it, didn't he?

A. Actually, there was no difference, I don't think, in the operation down there. It operated just like it had been operated under Kirschner's name.

Q. Did you go down and watch them operate it?

A. That is what they told me.

Q. Sir?

A. He said just merely cut the door—, door through there, —cut down the name of Kirschner. That is what he told me.

Q. After the Act of '49 was passed?

A. After it was repealed, yes.

Q. Sir?

A. After it was passed, yes; after the act went out in '49.

• • • • •

TESTIMONY OF LOUIS T. WEIS

CROSS-EXAMINATION
BY MR. VADEN:

* * * * *

927 Q. Now, you say after you started in 1949 keeping these books, —and when you say that, you are speaking about those books right there?

A. That is right.

Q. That is the only books you fooled with?

A. That is correct.

Q. Yes. —You would get some memorandums and you would get that from Mr. William Epstein, some of them, wouldn't you, or Mrs. William Epstein?

A. I presume I would. Somebody down there did give them to me.

Q. And once a month they would give you a memorandum to put on the books?

928 A. That is correct.

Q. If they had so much down for expenses, or purchases made out of cash, that would be on this piece of paper they would give you and you would put it on the books?

A. I would say purchases came from the checks, yes. They did very little merchandise purchasing by cash.

Q. Yes. And whatever the sales were, they would have on the memorandum?

A. That is right.

Q. (Continuing) —That they would give you, and then you would say—, you would take the memorandum, this piece of paper they gave you, and you would put it on those books there?

A. That is correct.

* * * * *

Q. Loans that were paid out of cash?

A. That is correct.

Q. They would put that on a piece of paper and you would put that on the books?

A. Yes, sir.

929 Q. I see. Do you make out income tax returns for persons that employ you for that purpose?

A. Yes, sir, I do.

Q. And did you do it in 1949, and prior to that time, anybody that wanted to use your services to make out tax returns?

A. Yes, sir, I did.

Q. I don't believe you made out Mr. Epstein's income tax returns?

A. No, I have never made out Mr. Epstein's income tax returns.

* * * * *

Q. Umhum. Mr. Summers would take the book you put it on, or Homer K. Jones, and he appears to be, for all practical purposes, Homer K. Jones—that is, Summers would take the figures off the books you had and make out an income tax return?

930 A. I presume that is what he did.

* * * * *

Q. Yes. You say that there is a thing that you and I call a police blotter or record that they have to keep in that record, a police record, —you say there was a book kept for the police?

A. There is a large sheet of paper which is kept for the police.

* * * * *

931 Q. Well, the pawn shop, —what you and I call pawn shop detail, pawn shop squad, —they did have a pawn

shop squad that works Beale Street for some years here, —I don't know whether they do now or not, —that is right there, isn't it?

A. Yes, sir.

* * * * *

TESTIMONY OF J. C. McDONALD

CROSS-EXAMINATION
BY MR. VADEN:

* * * * *

962 Q. And there was a large—, just simply hundreds of very small loans?

A. Oh, yes.

Q. Of course, on those kind of loans, a man needs lots of ones, fives and tens, doesn't he?

A. I am sure, yes, sir.

Q. Would you say that twenty thousand dollars in ones, five and tens would make a pretty good-sized bundle?

963 A. I imagine it would to me.

* * * * *

RE-CROSS EXAMINATION
BY MR. VADEN:

* * * * *

964 Q. Chief, at that time would you say that Mr. Epstein's relations with the Police Department were very frienldy?

A. Yes, sir.

Q. You were there and I was not. Did he ever come around up to the Police Station much?

A. Well, he used to, years ago.

* * * * *

TESTIMONY OF ALBERT WOOLDRIDGE

CROSS-EXAMINATION
BY MR. FITZHUGH:

* * * * *

979 Q. Mr. Wooldridge, Mr. William Epstein has been a valued customer of your bank for many years?

A. Yes, sir.

Q. Some thirty-five years?

A. Yes, I would say so. He was a customer—.

980 Q. He has borrowed lots of money from time to time from the bank?

A. Yes, sir, a good many times.

Q. And has large accounts there?

A. I would say he had adequate accounts.

Q. Adequate. You say that Mr. Epstein told you that his statement in his financial statements that he furnished the bank, on which loans are made, that he has not included his assets as set out in the statement?

A. I said that he told me that he had other assets that he had not included in the statement.

Q. Do you know it is a serious offense to make a false statement in a financial statement to a bank to secure a loan, isn't it?

A. Yes, sir, I know that.

Q. It is a very serious criminal offense, isn't it?

A. That is right.

* * * * *

981 Q. But the obtaining of a financial statement by a banker is not just an idle gesture?

A. No.

* * * * *

TESTIMONY OF MAYNARD EPSTEIN

CROSS-EXAMINATION
BY MR. VADEN:

• • • • •

1014 Q What I am getting at, in '52 you made a purchase of ten thousand dollars in the partnership, —talking about what money you spent in '52, —and fifty-eight hundred dollars, whatever it was, for the duplex on Montgomery?

1015 A. That is right.

Q. Now, you say Mr. Waldauer drew this?

A. Mr. Waldauer and Mr. Ben Adams.

Q. And you read paragraph six, didn't you?

A. I think so.

Q. Well, just for fear you did not, I would like to read it to you. It is very short.

"It is distinctly understood and agreed that William Epstein, being the founder and original owner of the business, will act as supervisor of the partnership business and will regulate its policy. Should there be a difference of opinion as to the policy on the operation of any phase of the partnership business, then the two partners agree that the opinion and decision of William Epstein shall control. Maynard Epstein shall devote his entire time and best efforts for the successful operation of the partnership business, and shall not become actively engaged in any other commercial pursuit. William Epstein shall spend such
1016 time and give such aid and assistance in the partnership business as, in his opinion, is necessary and proper. However, William Epstein is not required to devote his full time to the business, the sale of the

partnership interest to Maynard Epstein being made under liberal conditions of payment. William Epstein shall be responsible for obtaining such funds as are needed for the purpose of financing the partnership Business."

Mr. Will Epstein had pretty fair control over the partnership under that, didn't he?

A. He was always honorable. We never had a discussion of policy since we have been there.

• • • • •

REDIRECT EXAMINATION
BY MR. WILL GERBER:

• • • • •

1019 Q. Let me ask you this. I have analyzed this contract, and I notice you signed a note for $31,666.66, you paid twelve hundred fifty dollars cash and you executed a check for eighty-seven hundred fifty dollars?

A. That is right.

Q. All together that is $41,666.66?

A. That is right.

• • • • •

1020 Q. The $41,666.66, is that one-third of the inventory at that time?

A. Slightly less; about five thousand dollars, roughly, less.

Q. When did you discover that?

A. I discovered that just before we went to close the deal.

Q. Just before you closed the deal?

A. Yes, sir.

Q. Why did Mr. Epstein sign this contract with you when there was more money due him as a result of the inventory?

1021 A. He tried to raise the price and put it what we had dealt for, and I told him I was going to back out then, that I had paid—thought I paid a big price, and I was not going to pay any more. So we agreed to let the five thousand dollar mistake go.

• • • • •

RECROSS EXAMINATION
BY MR. VADEN:

Q. You paid forty-one thousand dollars for a third of this old inventory that wasn't worth much money?

A. Yes, sir.

Q. Is that right?

A. That is right.

• • • • •

TESTIMONY OF RICHARD DEUTSCH
DIRECT EXAMINATION
BY MR. BERNSTEIN:

• • • • •

1052 MR. FITZHUGH: May it please Your Honor, I don't think that is competent.

Your Honor, I am confident, will charge the jury it is a proper method.

THE COURT: Objection sustained.

MR. WILL GERBER: He is qualified as an expert.

THE COURT: It is a recognized method of computing—.

• • • • •

Q. In your opinion, as an expert accountant, do you believe that the net worth method is an accurate method of determining—?

1053 A. It is not an accurate method—.

MR. FITZHUGH: Don't answer the question.

THE COURT: Don't answer.

MR. FITZHUGH: I object to the question.

THE COURT: Well, the Court is going to charge this jury that it is, so I don't think his opinion about it is proper.

MR. WILL GERBER: We note an exception, if Your Honor please.

MR. FITZHUGH: And we ask that his answer be stricken,

THE COURT: Strike it. The jury won't consider that answer.

• • • • •

CROSS-EXAMINATION
BY MR. VADEN:

1066 Q. Mr. Deutsch, since this trial started, you have been sitting here at the counsel table with counsel for defendant?

A. Yes, sir.

Q. So I assume you are employed in this matter for this trial.

A. Yes, indeed. I was employed as accountant, an advisor to the counsel, yes, sir.

Q. How much are you being paid for your services?

A. I am supposed to be paid on a daily basis for each day in court one hundred dollars.

• • • • •

1071 Now, otherwise Mr. Norris' figures are about correct, except I believe you said there was a difference in your figures on personal living expenses?

A. Yes.

Q. Some several thousand dollars?

A. Most of it was his fixing up of the home. I would say perhaps I explained—.

Q. Yes. Well, generally speaking, so far as the figures you have used here being Mr. Norris', you agree with him, then?

A. Yes, sir, we do. We agreed March 15th.

Q. That is right. As a matter of fact, you called figures back—?

A. Yes.

Q. And at that time you agreed to those figures, except these?

A. Yes, sir. Mr. Vaden, may I say we did not completely agree. I had different figures on some items, but I accepted the Government's figures as right.

Q. Now, did you inquire into—, you say you did go into the bank account?

A. Yes, I did, Mr. Vaden.

1072 Q. Did you notice withdrawals from the Kirschner store account by the Epsteins, and deposited in their own account?

A. There was, yes, five thousand dollars transfer was—, I remember one that stood me up quite a bit.

Q. And did you see other withdrawals and other deposits?

A. Mr. Vaden, may be I would have to go through all my work papers to be sure. I don't remember. I only remember the five thousand dollars.

Q. Umhum. Out of the account of Kirschner into the Epstein, and Mr. and Mrs. Epstein account, —that is true, isn't it?

A. It seems about—

Q. You mentioned one, Mr. Deutsch.

A. I try to remember. They I think claim—, of course, I did not see that—

MR. VADEN: Yes.

A. (Continuing) —That they sold merchandise to the Kirschner store, and in payment for the merchandise five thousand dollars was transferred from the Kischner account to Mr. Epstein's account.

* * * * *

EXHIBITS

Many of the exhibits are referred to and described in the appendices; however, appellee may wish to refer to some or all of said exhibits in brief at greater length. All of said exhibits will be duly transmitted by the Clerk of the District Court to the Clerk of this Court, prior to the setting in the case.

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AUG 3 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 417

WILLIAM EPSTEIN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

WILLIAM EPSTEIN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming petitioner's conviction under section 145(b) of the Internal Revenue Code of 1939.

OPINION BELOW

The opinion of the Court of Appeals is not yet officially reported and is printed in Appendix C hereto, *infra*, p. 2a.

JURISDICTION

The judgment of the Court of Appeals (Appendix C, *infra*, p. 2a) was entered on July 2, 1957. The time for filing this petition was extended to August 31, 1957, by an order of Mr. Justice Brennan dated July 24, 1956 (Appendix D, *infra*, p. 15a). The jurisdiction of this Court is invoked under 28 U.S.C., § 1254 (1952 ed.).

QUESTIONS PRESENTED

This case presents three questions.

The first question is whether the Government, in a criminal prosecution for tax evasion based on the net worth method, must prove a likely source of income to establish that the net worth increases are properly attributable to unreported taxable income, there being no evidence of specific tax evasion or of concealment or destruction of records. The same question is also involved in *United States* v. *Ford*, 237 F. 2d 57 (2d Cir. 1956) and *Massei* v. *United States*, 241 F. 2d 895 (1st. Cir. 1957). This Court has already granted certiorari in both these cases. See 352 U.S. 1000 (1957); 353 U.S. 964 (1957). The present case submits this question in a more searching form and in a factual and legal setting of more general applicability than the *Massei* and *Ford* cases.

The second question is whether the Government has conformed to the standards of proving opening net worth and the existence of unreported taxable income which this Court has established for prosecutions based on the net worth method.

The third question is whether in a prosecution for tax evasion the jury may infer willfulness from the

defendant's unrelated omission of income in pre-prosecution years. Essentially the same question is involved in the *Massei* case.

STATUTE INVOLVED

Internal Revenue Code of 1939, Section 145(b); 53 Stat. 62 (1939), 26 U.S.C. 145(b) (1952 ed.)

* * * * *

> (b) Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

STATEMENT

On February 21, 1956, petitioner was indicted in four counts in the Western District of Tennessee for willfully attempting to evade his income taxes for the years 1949 through 1952. He and his wife filed joint tax returns for these years. Petitioner was charged with having omitted an aggregate income of $146,940.25, on which aggregate taxes of $74,004.23 were allegedly due. The net income and resulting taxes, as reported

by petitioner and revised by the Government, were as follows (R. 48a, 234a-235a, 91b-92b, 100b):[1]

Year	Reported Net Income	Tax	Revised Net Income	Tax
1949	$20,105.62	$ 4,278.96	$60,633.24	$22,844.03
1950	37,142.46	11,225.82	66,358.55	26,874.35
1951	16,526.59	3,866.31	69,325.84	32,303.39
1952	14,395.12	3,492.62	38,792.41	14,846.17

After a jury trial, based entirely on the net worth method of proof, petitioner was found guilty on all four counts. He was sentenced to imprisonment for five years on each count, the terms to run concurrently, and he was fined a total of $25,000 on the four counts (R. 256a).

The relevant evidence may be summarized as follows:

Petitioner was born in 1894 (R. 118a). In 1912 he went to work in a pawnshop in Memphis, Tennessee (R. 118a). By 1924 he and his wife had accumulated about $63,500 from employment and business ventures (R. 119a, 123a). In that year he opened his own

[1] In accordance with the rules of the court below promulgated under Rule 75(l) of the Federal Rules of Civil Procedure, and Rule 39(b)(l) of the Federal Rules of Criminal Procedure, petitioner, in the proceeding below, filed an Appendix designated "Appendix to Appellant's Brief". The Government also filed an Appendix designated as "Appendix to Appellee's Brief". These two Appendices have been certified to this Court in accordance with Rule 21(3). Page references to petitioner's Appendix below will be made in the following manner: (R. —a). Page references to the Government's Appendix below will be designated (R. —b). The exhibits referred to have all been certified to this Court, and in accordance with the District Court procedure are designated separately in numerical sequence with reference to the direct or cross-examination of particular witnesses.

pawnshop and a retail sales store (R. 120a). The two businesses were in the same building and were connected by a door (R. 122a).

On May 30, 1937, the Tennessee legislature enacted a statute prohibiting pawnbrokers from conducting any other business in the same or in an adjoining building (Appendix E, *infra*, p. 16a; R. 121a, 129a). On advice of his attorney, petitioner sealed the opening between the two stores and placed the sales shop in the name of J. P. Kirschner, his stepfather-in-law (R. 31a-32a, 64a, 121a-122a, 129a-130a, 197a; Coll. Ex. 21 to Davis). While title to the store was in Kirschner, petitioner continued to manage it as before (R. 122a, 130a). He made the purchases and paid the bills (R. 31a-32a). Mrs. Epstein worked in the sales store and was the only person authorized to draw checks on the store (R. 114b). Kirschner had nothing to do with the operation of the store (R. 63a, 64a, 122a). Both petitioner and the revenue agents agreed that petitioner owned the profits of the store (R. 63a-65a).

The sales store was operated in this fashion until April 14, 1949, when the restrictive legislation was repealed (Appendix F, *infra*, p. 16a; R. 122a, 129a). Petitioner then promptly reassumed title to the sales shop and reopened the door connecting it to the pawnshop (R. 65a-66a, 129a, 130a, 210a, 84b, 120b).

For the period of operation in Kirschner's name—from 1937 until 1949—petitioner, on advice of counsel, kept separate books and records for the sales shop and arranged for Kirschner to file separate tax returns for the sales business (R. 8a, 17a, 64a-65a, 122a, 197a-198a).

The total income reported on the Kirschner returns for the sales shop operation, 1937-1949, was $129,339.14; the total tax paid was $29,837.07; and the net proceeds after tax were $99,502.07 (R. 122a, 125a). After the pawnshop and the sales store were consolidated, following repeal of the restrictive legislation, petitioner again reported the income from both businesses on his returns jointly filed with his wife (R. 65a, 130a, 13b).

Before 1948 petitioner and his wife filed separate returns. For the years 1948 through 1952 they filed joint returns (R. 8a, 122a, 3b-4b).

Throughout the prosecution period of 1949 to 1952, petitioner regularly maintained records for the pawnshop and sales shop. A public accountant was in charge of his books (R. 7a-8a, 13a, 15a, 163a, 165a, 121b). The books showed receipts, purchases, and other expenses (R. 14a).[2] All loans were made in cash (R. 165a, 122b). Each loan could be checked because petitioner recorded each loan pursuant to a local ordinance (R. 165a-166a, 177a-178a, 122b). Petitioner had to furnish the police department a daily report of his loans and redemptions (R. 165a-166a, 178a, 122b). A special pawnshop detail of the department checked his records several times a day (R. 165a-166a, 177a-179a). Petitioner fully cooperated with the police, and, as police officials testified, they were entirely satisfied

[2] At the trial there was some difference of opinion whether most of the expenses were paid in cash or by check (R. 164a, 13b, 80b, 121b). This variety of view is rather unimportant, for the additional income constructed by the Government is attributed to alleged unreported receipts from sales and interest on loans. There is no dispute over the expenses deducted by petitioner (R. 56a-57a).

that his records were correct (R. 177a-178a, 180a, 182a). There is no evidence that the Government investigated these records. The Government conceded that petitioner's inventory figures were "true" (R. 131a-132a). The revenue agents never investigated or evaluated the inventory records in order to check the accuracy of the volume of sales reflected on petitioner's books (R. 195a).

Petitioner's returns for 1949 through 1952 accurately reflected the books and records of both businesses[3] (R. 7a-8a, 13a). In 1949 the Government audited his 1946 return and found nothing wrong with his system of entries (R. 126a). The Government conceded that his returns for 1949 through 1952 correctly reported his income from all sources, except that it assumed his returns were not complete as to his business receipts consisting of interest on loans and proceeds from sales (R. 56a-57a, 142a)[4].

According to the undisputed evidence, petitioner's books were adequate under the regulations (R. 8a-9a, 18a, 28a-29a, 36a, 164a). The record does not show a single instance of failure to record receipts or of false entry. The only criticism of petitioner's records was the statement by revenue agents that cash transactions could not be verified (R. 13a, 80b).

In order to prove its case, in the absence of any specific evidence of tax evasion, the Government pro-

[3] Revenue agent Huddleston testified that "the figures on the returns did agree with the books and records that he gave me" (R. 13a).

[4] Petitioner's other sources of income in the prosecution years were real estate, stockholdings, and partnership interests (R. 56a-57a, 142a).

ceeded by the net worth method (R. 227a-228a).[5] It started with an opening net worth of $246,839.63 as of December 31, 1948 (R. 97b; Ex. 5 to Norris, Appendix G(2), *infra*, p. 18a). On the basis of this premise the Government constructed annual increases in net worth for the prosecution years in amounts greatly exceeding petitioner's reported net income for those years (R. 97b-100b; Ex. 5 to Norris, Appendix G(2), *infra*, p. 13a). Accordingly, it "reconstructed" petitioner's net income for each of the years (See table, *supra*, p. 4). As reconstructed, the net income attributed by the Government to petitioner's businesses for each of the years except 1952 was substantially greater than his net income from the same sources for any pre-prosecution year, though petitioner's businesses had not changed.[6]

The Government credited petitioner with an opening net worth on December 31, 1948, of $246,839.63, including $20,000. as total cash for petitioner and his wife (R. 51a-52a, 93b, 96b; Ex. 5 to Norris, Appendix G(2), *infra*, p. 18a). The court below states that this figure "went back to defendant's bank statement for December 31, 1946," showing cash on hand and in bank of $21,740, of which $19,546 was cash on hand (R. 52a).

The only direct evidence in the record of petitioner's cash on December 31, 1948, or from December 31, 1946,

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[5] The court below stated that petitioner's accountant, Jones, agreed that this was the proper method. Jones did not testify. The court is apparently relying on a statement by revenue agent Norris purporting to report Jones' alleged statement (R. 77b).

[6] Petitioner's highest pre-prosecution net income was $43,266.06 in 1942, compared with the attributed annual net income for 1949-1951 in excess of $60,000.

to December 31, 1949, is petitioner's evidence that on December 31, 1948, he had $129,855.84 in cash, consisting of $27,116.02 belonging to his wife, $82,739.82 accumulated from the Kirschner operation, and $20,000 belonging to himself (Exhibit 1 to Deutsch, Appendix G(1), *infra*, p. 17a; R. 207a). The Government made no allowance for the wife's cash or the cash from the Kirschner operation. (Exhibit 5 to Norris, Appendix G(2), *infra*, p. 18a).

The Government attempted to support its figure of $20,000 cash by (a) statements made by petitioner to the Union & Planters Bank & Trust Co. as of February 2, 1945; December 31, 1946; December 31, 1949; and January 1, 1952; (b) Dun & Bradstreet reports reflecting these statements (R. 22a-23a, 25a, 52a-54a, 72a-73a, 29b-30b, 100b-101b); and (c) oral statements made by petitioner to the revenue agents in 1955, (i) which, without relating to any specific time, indicated that petitioner had cash of $6,000 or $8,000 "in his business" (R. 77a); (ii) which, in response to questions as to the amount of cash petitioner had "in his business" in 1948, referred to $25,000 or $20,000 (R. 41a); and (iii), which, in response to questions concerning the largest amount of cash he had, mentioned $35,000 or $40,000 (R. 15a, 41a).

As to the bank and Dun & Bradstreet statements, the Government conceded that petitioner did not include all his assets or any of his wife's assets (R. 108a-113a, 126a, 185a, 24b). In regard to these statements, petitioner explained that they did not include his wife's cash because they related only to his own individual assets (R. 78a, 108a-109a, 114a-115a, 141a-142a, 203a-204a), and that he had regularly excluded the Kirschner earnings because they consisted of cash

accumulated in a business from which he had formally divorced himself (R. 78a, 108a-109a, 203a-204a). As narrated above, until April, 1949, the Kirschner operation was conducted separate from petitioner's pawnshop. See p. 5, *supra*.

The revenue agents made no attempt to check the completeness of any of the statements with the bank officials (R. 117a, 186a).

Petitioner had a vault in his pawnshop where he always kept large sums of cash (R. 15a, 39a-40a, 122a, 128a, 176a-177a, 181a, 195a-196a). He required large sums in his loan business (R. 15a, 196a). He had unsuccessfully sought to insure about $125,000 to $150,000 of cash (R. 27a-28a, 201a, 35b-36b).

The Government offered no proof that petitioner's businesses were a likely source of, or capable of producing, income greater than the income reported by petitioner or approximating the alleged income attributed to the businesses. (Cf. R. 143a-148a). The only direct evidence on the earnings of petitioner's businesses in the prosecution years indicated that they had dropped off considerably from the level reached during and immediately after the war (R. 146a, 166a. 188a, 190a).

Petitioner moved for acquittal on the grounds, *inter alia*, that the Government had not shown a likely source of unreported income, had not established the opening net worth, and had not proved willfulness (R. 155a-160a). The motion was overruled (R. 161a, 213a).

The jury returned a verdict of guilty as charged (R. 255a). Petitioner was sentenced to imprison-

ment for five years on each count, the sentences to run concurrently, and fined $25,000 (R. 256a). An appeal was taken to the Court of Appeals for the Sixth Circuit, and on July 2, 1957, the Court of Appeals affirmed the judgment of conviction.

REASONS FOR GRANTING THE WRIT

This case presents three significant questions in the administration of the income tax laws and in the administration of the criminal law. These questions relate to (1) the necessity of proof of a likely source of unreported taxable income where proof is by the net worth method and no specific instances of tax evasion are involved; (2) the method of proving the existence of unreported taxable income and of opening net worth; and (3) the method of proving willfulness or intent to evade the payment of taxes.

I.

In *Holland* v. *United States*, 348 U.S. 121 (1954), this Court declared that the net worth method of proof "is so fraught with danger for the innocent that the courts must closely scrutinize its use." *Id.* at 125. The method involves "something more than the ordinary use of circumstantial evidence in the usual criminal case." *Id.* at 124. As the Court thoughtfully emphasized, juries may readily assume, in the presence of formidable figures and charts, that mere increases in net worth, without more, establish a case of unreported taxable income. By the same token, the burden of proof may be wrongfully shifted from Government to defendant, unless the prosecution proceeds with meticulous care and restraint.

Hence, in the *Holland* case this Court established the basic principle that mere proof of increases in net worth is not adequate proof of wrongfully omitted income. In the words of the Court, "requisite to the use of the net worth method is evidence supporting the inference that the defendant's net worth increases are attributable to currently taxable income." *Id.* at 137. "Increases in net worth, standing along, cannot be assumed to be attributable to currently taxable income." However, it may be sufficient for the Government to prove "a likely source, from which the jury could reasonably find that the net worth increases sprang." *Id.* at 137-138.

In the *Holland* case itself the Court cogently indicated the nature of a "likely source" of "currently taxable income." It held that the Government had sustained its burden of establishing omitted income because "the disclosed business" of the defendant "was proven to be capable of producing much more income than was reported and in a quantity to account for the net worth increases," and because of specific evidence of withdrawal of cash which was not disclosed on the defendant's books. 348 U.S. at 138. The Government's evidence revealed that the defendant's business had increased in the prosecution years, that the cash register tapes had been destroyed, and that the books had failed to reflect the receipt of moneys withdrawn for personal expense and business supplies. *Id.* at 139. To the same effect, see also *Smith* v. *United States*, 348 U.S. 147, 158 (1954); *United States* v. *Calderon*, 348 U.S. 160, 165 (1954).

Despite the apparent clarity of the *Holland* opinion the Courts of Appeals disagree whether the Government must establish a likely source of income in the

prosecution period which accounts for the alleged increase in net worth. The Second Circuit has held that a defendant may be convicted under the net worth method without any proof of a likely source. *United States* v. *Ford*, 237 F. 2d 57 (2d Cir. 1956). On the other hand, the First Circuit has held that proof of an increase in net worth, without further proof of a likely source, is not enough to sustain a conviction. *Massei* v. *United States*, 241 F. 2d 895 (1st Cir. 1957); *Thomas* v. *Commissioner*, 232 F. 2d 520 (1st Cir. 1956).[7] This Court has granted certiorari in order to resolve the significant question reflected by the conflict between the First and Second Circuits. See 352 U.S. 1000 (1957); 353 U.S. 964 (1957).[8] In the words of the Government, the question before the Court in *Massei* and *Ford* is whether "in a tax evasion prosecution based on the net worth method, proof of a likely source of the defendant's net worth increases is an indispensable element of the Government's case." Petition for Certiorari, p. 2, in *United States* v. *Massei*, No. 885, October 1956 Term.

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[7] While the *Thomas* opinion dealt with a civil fraud proceeding, the First Circuit held that proof of a likely source of income is "an indispensable element of the net worth method", whether the case be civil or criminal. 232 F. 2d at 526. If persuasive evidence of a likely source is necessary in a civil case, *a fortiori* it is required in a criminal case, where the Government's burden is greater.

[8] The position of the Sixth Circuit, in which the decision below was rendered, is not clear. In the present case Judge Allen holds that a "likely source" exists, but does not indicate whether a "likely source" is essential. In a dissent in *Hasson* v. *Commissioner*, 239 F. 2d 778, 783 (6th Cir. December, 1956), Judge Stewart states that "We have not thought that these words [*re* likely source] in the *Hollana* opinion stated such an absolute injunction." Cf. *Kashat* v. *Commissioner*, 229 F. 2d 282 (6th Cir. January, 1956).

This case presents the same question in a much wider and more common context. The *Ford* and *Massei* cases involve police officers who are charged with evading taxes on bribes. On the other hand the decision below involves the ordinary small businessman. It intimately affects the tax status of innumerable modest entrepreneurs who, in the manner of petitioner, conduct their affairs from day to day largely through cash transactions.

The Court of Appeals has held here that "the jury could reasonably find from this record of exhaustive investigation that a likely source of net worth increase existed in the pawnbroker's business and the Kirschner business with their many cash transactions." Appendix C, *infra*, p. 6a).[9] But as the record plainly discloses, the Government did not offer the least proof that petitioner's businesses were "capable of producing much more income than was reported." *Holland* v. *United States, supra,* at 138.[10] The Court of Appeals simply reasoned that petitioner's books were "not adequate" because of testimony that cash transactions could not be verified from their contents. It then concluded that since the cash transactions could not be verified from the books, the alleged increases in net worth were at-

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[9] The phrase "Kirschner business" obviously refers to petitioner's sales store. After April, 1949, that store was no longer operated in the name of Kirschner. See p. 5, *supra.*

[10] At an earlier point the Court of Appeals states, "The Government also presented evidence of the existence of a current tax source, namely, income from the pawnbroker business, the store, *and substantial income from other sources*" (italics supplied). Appendix C, *infra*, p. 5a. This observation betrays some unfortunate confusion. The Government admitted that petitioner had correctly reported his income from all sources other than the pawnshop and the sales shop. See p. 7, *supra.*

tributable to the businesses.[11] In short, the court below assumed that if a taxpayer has a going business, including cash transactions, an alleged increase in his net worth may be mechanically imputed to the business though there is no proof that the business is "producing unrecorded amounts of income." Cf. *Smith* v. *United States, supra,* at 159.[12] This conclusion is, we submit, irreconcilable with the *Holland* opinion. See 348 U.S. at 126, 128, 138.

The facts of the present case demonstrate the far-reaching effect of the decision below. While petitioner engaged in cash transactions, they were in the ordinary course of his business of selling goods and making loans. There is no suggestion of any strange or unusual transactions. There is no suggestion of false or deceptive entries. There is no suggestion of lost or destroyed books.[13] And the Government fully conceded that the books and returns were in complete accord. See p. 7, *supra.*

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[11] For present purposes we are assuming, which is not the case, that the Government's net worth tabulations are correct. But see p. 20, *infra.*

[12] The Court of Appeals mysteriously says, "While the evidence was in controversy the government, through many witnesses and exhibits, presented evidence of substantial understatement of income for each of the taxable years." Appendix C, *infra,* p. 5a. The only evidence which the Government presented was evidence of alleged increases in net worth. There was no proof that any of the alleged increases derived from the income of petitioner's businesses. See further pp. 16-17, *infra.*

[13] Compare, on the other hand, *Holland* v. *United States, supra,* at 137 (proof of calculated omissions and destroyed tapes); *Smith* v. *United States, supra,* at 158 (lack of records); *United States* v. *Calderon, supra,* at 165 (proof of incomplete, lost, and misplaced records).

Moreover, the Court of Appeals was unduly apprehensive when it observed that petitioner's cash transactions could not be appropriately verified. The Government was scarcely helpless in determining whether any income had been omitted from the books. The cash income of the two stores derived from loans and sales. Each loan was meticulously recorded, as required by local ordinance, and could easily be checked. See p. 6, *supra*.[14] The volume of cash sales could readily be approximated on the basis of petitioner's inventory figures, which the Government accepted as correct (R. 131a-132a). In fact, the revenue agents refrained from examining petitioner's inventory records and loan records, though all were available to them (R. 194a-195a).[15]

So far as "likely source" is concerned, the crux of the matter seems clear. The Government did not produce evidence of a single failure to report income deriving from a loan or a sale (R. 56a, 57a, 142a). It did not make any effort to determine whether petitioners' businesses had the earning capacity which it so freely assumed. It did not offer any proof that the businesses were doing as well in the prosecution years as in the prior years. It did not check the operations of similar businesses (R. 144a-145a) to determine whether petitioner's reported income was markedly different from

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[14] The Court of Appeals overlooks the relevant evidence when it states that "the only record" of the loans consisted of "memoranda" given to the accountant once a month. Appendix C, *infra*, p. 3a.

[15] The opinion below notes, with some emphasis, that "expenditures made in currency" could not be verified from the books. Appendix C, *infra*, pp. 3a, 4a. The emphasis is rather misplaced, for the Government did not charge that any omitted income was concealed by false expense deductions. See note 2, *supra*.

the profits of others. Indeed, the evidence affirmatively indicated that petitioner's enterprise lacked the additional earning capacity assumed by the Government. On March 6, 1947, petitioner reported to Dun & Bradstreet that "net sales and pawn loans have been off considerably so far this year compared with the same months last year." He attributed this decline "to higher prices and less income on the part of customers" (R. 146a; Collective Ex. No. 21 to Davis). In the post-war period through 1952 business continued to recede considerably from the high level reached during the war (R. 166a).[16]

In affirming the judgment of conviction the Court of Appeals has wrongfully relieved the Government from the burden of proving a likely source of income. As a result, the decision below is in sharp conflict with the decision in *Thomas* v. *Commissioner, supra,* as

[16] At the trial the Government showed that the average reported net profit of the two businesses was $34,675.08 for the pre-prosecution years 1945 through 1948, as compared with an average reported net profit of $8,101.31 for the prosecution years 1949 through 1952 (R. 67a-69a; Ex. 10 to Norris, Appendix G(4), *infra*, p. 20a. Through this display of adding and dividing the Government sought to suggest that petitioner must have omitted $26,571.77—the difference between the two averages—in each of the prosecution years. This kind of arithmetic speaks for itself. The Government blandly proceeded on the remarkable premise that since business was good before, it must have been good later. Even on this strange theory, which derives from make-believe as distinguished from evidence, the total alleged unreported income was about $106,000, as contrasted with a total of about $146,000 charged in the indictment. It is not surprising that the court below considered the Government's theory too irrelevant to mention. Cf. *Holland* v. *United States, supra,* at 137, where the Government felt obliged to prove an increase in income for the prosecution years, though the defendants' reported profits were only about 25 percent of the amount declared in a prior year.

well as *Massei* v. *United States, supra.* The *Thomas* case is especially pertinent here. It also involved the prosecution of an ordinary businessman and the First Circuit sternly disapproved what the court below has liberally sanctioned. There, as here, the Government relied on the net worth method of proof. And there, as here, the Government took the view that it is enough if the taxpayer's business "is a possible source of taxable income which could account for the net worth increases." 232 F. 2d at 526. The reply of the First Circuit was precise and to the point. It applies no less here. "We think," the court said, "this argument assumes the very fact to be proved. There must be some independent showing that the corporation might be the source of the unreported income, not merely a negative inference arising from the prior assumption that the increases were taxable and therefore must derive from the corporation since no other taxable source is apparent." *Ibid.*[17] The First Circuit then significantly added:

> ". . . The books of the corporation are admittedly consistent. Of course this does not prove they are honest, but in the absence of some independent evidence to the contrary, we believe that respondent has not indicated a likely source of taxable income. There can be no presumption that the books of the corporation are wrong, for any such approach would render entirely nugatory this particular safeguard against abuses of the net worth method." *Ibid.*

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[17] The First Circuit's opinion emphasizes that in the *Holland* case "the business was proven to be capable of producing much more income than was reported and in an amount sufficient to account for net worth increases." *Ibid.*

The decision below eliminates the vital "safeguard" which the *Thomas* decision carefully preserves in response to the *Holland* opinion. It authorizes a prosecution for tax evasion without any proof that an alleged increase in net worth reflects currently taxable income. And so the decision below raises a critical question which radiates well beyond this immediate case.

II.

In *Holland* v. *United States, supra,* at 132, this Court declared that an "essential condition in cases of this type is the establishment, with reasonable certainty, of an opening net worth, to serve as a starting point from which to calculate future increases in the taxpayer's assets. The importance of accuracy in this figure is immediately apparent, as the correctness of the result depends entirely upon the inclusion in this sum of all assets on hand at the outset." Or, as the Court stated in a companion case, the Government cannot succeed without "proof that assets on hand at the beginning of the prosecution period did not account for the alleged net worth increases." *Smith* v. *United States, supra,* at 155.

In this case the Government has failed to apply the Court's controlling standard of "accuracy" and "reasonable certainty." Its methods of proof, which the Court of Appeals has approved, are plainly incompatible with the safeguards contemplated by the *Holland* decision. As the Court of Appeals' opinion graphically reveals, the Government has been satisfied with a good deal less than the "reasonable certainty" on which the "essential" opening net worth must rest.

The Court of Appeals begins its analysis with an obvious error. It refers to a Government exhibit as indicating that in the four prosecution years petitioner's total expenditures were $368,951.85, while his total reported net income for the same period was $88,169.79[18]—a difference of $280,782.06 (Ex. 8 to Norris, Appendix G(3), *infra*, p. 19a). The Court of Appeals then says, "These calculations, which the jury evidently believed, showed that defendant's private expenditures exceeded his total available income and entitled the jury to find that defendant had large unreported income." (Appendix C, *infra*, p. 6a.)

This holding is incorrect for two reasons. In the first place, as the computation itself shows and the Government concedes, the court completely ignored the fact that defendant had non-taxable receipts in this period of $133,841.81. This amount is shown on the Government's chart as "Non Taxable Income etc." (Ex. 8 to Norris, Appendix G(3), *infra*, p. 19a). According to agent Norris, who prepared the computation, this item consisted of loans and non-taxable types of income "which petitioner is entitled to." (R. 108b). More important, the mere relationship of expenditures to reported income in the prosecution period is meaningless. It takes no account of the crucial factor—the taxpayer's net worth at the start of the prosecution period. If the taxpayer entered the prosecution years with sufficient available funds to supply the difference, the expenditures are easily explained. Cf. *Dupree* v. *United States*, 218 F. 2nd 781, 784 (5 Cir. 1955).

Next the Court of Appeals turns to another Government exhibit which purports to show that from 1920

[18] The court in its opinion incorrectly referred to this figure as being $88,170.19 (Appendix C, *infra*, p. 5a).

through 1948 petitioner's total expenditures exceeded the total reported income of himself and his wife. The exhibit indicates total expenditures of $514,010.90, as compared with total reported income of $484,964.66 (Ex. 11 to Norris, Appendix G(5), *infra*, p. 20a). These figures, the Court of Appeals then concludes, support the finding that petitioner "had some unreported income which was properly attributable to his earnings." Appendix C, *infra*, p. 6a. Once again the Court of Appeals has gone astray. We can reasonably assume that the jury was no less susceptible to error when it appraised the same collection of figures amid a good many others.

To begin with, the exhibit relates solely to pre-prosecution years. It cannot sustain a finding for the years embraced by the indictment. Second, this mode of calculation—which is widely used in net worth cases—is obviously fallacious, unjust, and prejudicial. For example, the computation includes only reported income of petitioner since 1920 and reported income of his wife since 1937. However, in 1920 petitioner was 24 years old (R. 118a-119a); he had been gainfully employed since 1912 (R. 118a); and the evidence shows, without contradiction, that he had already accumulated substantial savings for which the Government's computation gives him no credit (R. 118a-120a; Ex. 11 to Norris, Appendix G(5), *infra*, p. 20a). The Government simply and conveniently assumes a net worth of zero in 1920. Mrs. Epstein was also gainfully employed. The evidence shows very precisely, and again without contradiction, that by 1924 petitioner and she had steadily accumulated savings of $63,500, for which they were given no credit (R. 118a-120a, 123a).

Again, for the entire 28-year period the same computation makes no allowance whatever for non-taxable receipts, especially loans, which are described as "Non Taxable Income, etc." in the previously discussed exhibit. All loans are nicely ignored, though petitioner and his wife were very actively engaged in investment activities (R. 124a). The Court of Appeals attempts to justify this sustained disregard of loans on the basis of a statement by agent Norris. The latter testified that in an interview with petitioner "We talked about gifts, inheritance, loans and items of that type, and he said that he never did receive any or any form of money" (R. 83b). This evidence has a strange ring, for the Government itself introduced an exhibit which contains a lengthy and detailed record of substantial loans, between 1934 and 1948, from the Manhattan Savings Bank to petitioner (Collective Ex. 14 to Davis). Without any explanation the Government steadfastly ignored all loans before 1949, though at the same time it took petitioner's loans in the prosecution years into account in reconstructing his alleged income for those years. See p. 20, *supra*. At the very least, to put it mildly, the exhibit on bank loans indicates that the Government has failed to exercise the "great care and restraint" which this Court expects in net worth prosecutions. *Holland* v. *United States, supra*, at 129. Here, certainly, was a "lead" to which the Government should have been attentive in computing the opening net worth of petitioner. Cf. *id.* at 135. Nevertheless the Government completely disregarded this essential information.

Needless to say, the Government's erroneous calculation—that petitioner had spent more than his income before December 31, 1948—was highly prejudicial to

petitioner. As the Court of Appeals indicates, it naturally induced the jury to believe that petitioner had unreported taxable income. In addition, it wrongfully led to the desired inference that petitioner could not have had a substantial amount of cash on hand at the start of the prosecution period.

We now turn to the Court of Appeals' further analysis and approval of the Government's proof. Despite its reference to Exhibit 11, the Court of Appeals was not too persuaded that the revelations of the exhibit particularly justified the Government's computation of opening net worth. For the court then attempted to state a satisfactory rationale for petitioner's conviction in terms of evidence which it apparently regarded as more pertinent. "A crucial point of the controversy," the court says, "is the Government's calculation of net worth as of December 31, 1948." Appendix C, *infra*, p. 6a. The Government computed the opening net worth as $246,839.63. Petitioner asserted that his opening net worth was $356,695.47. The difference between the two figures turned on the cash on hand as of December 31, 1948. The Government credited petitioner with only $20,000 of cash on hand. Petitioner maintained that in addition his wife had $27,116.02 of her own[19] and he had $82,739.82 accumulated from the Kirschner store (Ex. 5 to Norris, Appendix G(2), *infra*, p. 18a; Ex. 1 to Deutsch, Appendix G(1), *infra*, p. 17a). See p. 9, *supra*. As the Court of Appeals admits, if petitioner's figures for cash were correct, the income constructed under the net worth method "tallied very

[19] The wife's accumulation of cash was significant because petitioner had filed joint returns with her for the prosecution years.

closely" with the income reported on petitioner's return. Appendix C, *infra*, p. 7a.[20]

The Government, of course, must prove its opening net worth computation beyond a reasonable doubt. See *Holland* v. *United States*, *supra*, at 126, 128, 138. With respect to the cash item, it sought to do so by merely relying on various statements made by petitioner. None of these statements involved the critical date of December 31, 1948; none of them purported to

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[20] The court below, on a number of occasions, uses incorrect figures because of confusion in the record. This confusion stemmed from the Government's use, over petitioner's objection, of figures for 1948, as well as for the prosecution years, 1949-1952.

At three points in its opinion the court asserts that petitioner claimed a cash accumulation of $168,000 as of the starting date, December 31, 1948. Appendix C, *infra*, pp. 8a, 11a. This statement is incorrect. The total of $168,000 was the figure claimed by petitioner as of December 31, 1947. Petitioner never claimed more than $129,000 in cash as of the relevant date, namely, December 31, 1948. The larger figure—$168,000—appeared in petitioner's proof only because the trial court's refusal to strike the Government tabulations as to the pre-prosecution year 1948 made it necessary for petitioner to introduce evidence with respect to cash on hand as of December 31, 1947.

The same persistent error appears in the opinion of the court below with respect to the cash on hand belonging to petitioner's wife. The court incorrectly states that the figure of $27,116.02, representing Mrs. Epstein's cash on hand as of December 31, 1948, "was later raised to $63,000" (Appendix C, *infra*, p. 8a). This observation is incorrect. The $63,000 represented Mrs. Epstein's cash on hand as of December 31, 1947, and petitioner showed that she expended the difference between $63,000 and $27,116.02 for investments in the calendar year 1948 (R. 208a). At no time did petitioner assert any figure other than $27,116.02 as representing Mrs. Epstein's cash on the relevant date December 31, 1948.

As we have stated, the Court of Appeals' erroneous understanding of these figures, which apparently seriously influenced its judgment, was due to the erroneous ruling permitting the Government to include on its charts and in its evidence figures with respect to the year 1948, which was not in issue.

include either his wife's cash or the Kirschner accumulation; and none of them was in the least corroborated.

Specifically, the Government derived its figure of $20,000 from statements which petitioner made to a local bank, to Dun & Bradstreet, and to revenue agents. All of them related to the amount of cash which petitioner kept on hand in the active conduct of his businesses (R. 15a, 41a, 77a). None of them remotely dealt with his wife's cash or other assets (R. 78a, 108a-109a, 114a-115a, 141a-142a, 203a-204a). For that matter, the statements to the bank and Dun & Bradstreet were concededly incomplete in regard to petitioner's own assets (R. 108a-113a, 126a, 185a, 24b). Certainly, they did not include the Kirschner accumulation of $82,739.82 (78a, 108a-109a, 203a-204a). As of December 31, 1948, the sales store was still operating under the name of Kirschner, and Kirschner was still filing returns for its income (R. 65a-66a, 129a, 130a, 210a, 84b, 120b). The Dun & Bradstreet reports expressly state that on June 1, 1937, the sales business was transferred to the name of petitioner's "father-in-law" (Collective Ex. 21 to Davis). The president of the bank specifically testified that petitioner "told me at different times that the statements did not include all his assets" (R. 185a). The assets and cash accumulation of the Kirschner business were simply not included in any of petitioner's financial statements.

The Court of Appeals does not even try to justify the Government's refusal to include the wife's $27,116.02 in the opening net worth figure. However, the court attempts to dispose of the Kirschner accumulation of $82,739.82 as follows:

> "As to the item of $82,739.82 cash on hand from the Kirschner store defendant finds himself on the

horn of a dilemma. If during the years in which the Kirschner income accumulated the store belonged to defendant he should have returned this income in his personal income tax. If the store belonged to Kirschner the income received did not belong to defendant and could not be figured in cash on hand as of December 31, 1948, in establishing net worth. Defendant did not explain this situation. The jury was entitled, if it found the store belonged to the defendant, to consider defendant's failure to return the yearly net income of the Kirschner store in his income tax return as evidence of substantial evasion. If the jury found the store belonged to Kirschner it was entitled to disregard the sum of $82,739.82 in the calculation of net worth." Appendix C, *infra*, p. 10a.

The Court of Appeals has discovered a dilemma where none exists. There is no question that petitioner at all times owned the Kirschner store. Throughout the trial it was fully agreed by petitioner and the Government that petitioner, as owner of the store, was taxable on the income which it produced (R. 63a-65a). The trial court instructed the jury, over objection, that it could consider his failure to report the Kirschner income as evidence of willfulness in this prosecution (R. 225a-226a). Moreover, the Court of Appeals has approved this instruction as correct. The court nowhere disputes the evidence that on December 31, 1948, there was a Kirschner accumulation of $82,739.82. And since petitioner owned the Kirschner store, he equally owned the accumulation. The only answer which the Court of Appeals is able to muster is that petitioner should have reported the Kirschner income in his own returns. But this answer is no answer at all. Petitioner is not being prosecuted here for a failure to pay tax on income realized before 1949.

The methods employed by the Government in this case raise a substantial question concerning the meaning and application of the principles so carefully expressed in the *Holland* opinion. Unless these standards are faithfully implemented, they inevitably become vacant generalities. This Court has emphasized the grave dangers which attend the use of uncorroborated statements made by taxpayers to agents in the course of investigation. See *Holland* v. *United States, supra,* at 128; *Smith* v. *United States, supra,* at 152. The present case illustrates that taxpayers may be similarly ensnared through the Government's extravagant use of statements made to others. A businessman who makes a financial statement to a bank for limited credit purposes does not necessarily include all his assets. Certainly he does not normally include his wife's cash or other property; and it is quite understandable that he would not include any assets derived from a business being operated in the name of a relative, especially when the tax returns for that business have been filed in the name of the relative.

The court below reasons that the financial statements made to the bank and Dun & Bradstreet need not be corroborated. Appendix C, *infra,* p. 13a. This conclusion is quite beside the point. In *Holland* v. *United States, supra,* this Court stated that the Government cannot prevail unless it establishes the opening net worth, including the crucial cash figure, by credible evidence carefully presented. It may not rely on evidence that is palpably limited and partial. It may not stubbornly ignore affirmative evidence of other sources of cash accumulations. It may not arbitrarily select an obviously incomplete figure and, in effect, place upon the taxpayer the burden of proving a higher figure.

And it may not seek to support its arbitrary figure by an obviously erroneous computation of the taxpayer's prior financial history. Prosecutors, no less than courts, should be sensitively aware that "bare figures have a way of acquiring an existence of their own, independent of the evidence which gave rise to them." *Holland* v. *United States, supra,* at 128.

Accordingly, we respectfully submit that this Court should review the present case in order to consider the controlling standards of proof in establishing the existence of unreported taxable income and the opening net worth, and to make clear that the prosecution does not carry its burden unless it establishes the opening net worth and the amount of unreported taxable income with reasonable certainty through fair and meticulous evidence.

III.

We now turn to the third question which merits the special scrutiny of this Court.

On the issue of willfulness the trial court charged the jury:

> "... with respect to the separation of what has been referred to in the trial as the Kirschner Sales Store from the defendant's pawn shop, as required by an act of the Tennessee Legislature, that this is a matter you may consider on that phase of the case which deals with the filing of a separate tax return for the sales store and whether or not the defendant in filing a separate return or permitting such a separate filing willfully intended to evade by fraudulent means his just taxes for any given tax year under consideration in this case.
>
> * * *

I might say here, it is not permissible under the tax laws for one who owns more than one business to split or lessen his income tax liability by filing or permitting the filing of a separate return for one of such businesses, even though the return is made out and filed in the name of a third person." (R. 225a-226a).

Petitioner excepted to these instructions, stating that "Kirschner cannot be considered in determining" guilt or innocence in this case (R. 241a-242a).

"A final element necessary for conviction is willfulness." *Holland* v. *United States, supra,* at 139. The Government must establish a specific intent or design to conceal income. *Spies* v. *United States,* 317 U.S. 492 (1943). Here the trial court elaborately charged the jury that on the question of willfulness or intent it was free to consider petitioner's pattern of filing separate returns of the Kirschner income in the pre-prosecution years. The Court of Appeals has approved the instruction. "The jury was entitled, if it found the store belonged to the defendant, to consider defendant's failure to return the yearly net income of the Kirschner store in his income tax return as evidence of substantial evasion." Appendix C, *infra,* p. 11a. In so holding the Court of Appeals has departed from a fixed principle of criminal law.

At this late date it is well settled that evidence of other wrongs, unrelated to the offense charged, cannot be considered in determining the guilt of an accused. *Boyd* v. *United States,* 142 U.S. 450 (1892); and see *Johnson* v. *United States,* 318 U.S. 189, 195 (1943). This principle clearly applies here. The prior separate reporting of the Kirschner income was a

matter wholly apart from the present inquiry into petitioner's alleged willful failure to report income from his businesses. As the undisputed evidence shows, the tax treatment of the Kirschner earnings derived entirely, on the advice of counsel, from a local statute enacted in 1937. Clearly it was not tainted with any desire to conceal income. Indeed, petitioner publicly affirmed, in his statements to Dun & Bradstreet, that the sales store had been formally transferred because of a local statute. (Coll. Ex. 21 to Davis). And when the Tennessee statute which generated the Kirschner transaction was repealed in 1949, the store was promptly placed in his name again and its income was reported on his returns once more. See pp. 5-6, *supra*. Tax motivations were at no time involved.

Evidence of another offense is relevant only if it helps "to establish a criminal plan or design out of which the crime charged has originated." *Lovely* v. *United States*, 169 F. 2d 386, 388 (4th Cir. 1948). But here there is not the slightest suggestion of any such "plan" or "design" which connects the separate reporting of the Kirschner income to the alleged evasion in the prosecution period.

The Court of Appeals' approval of the instruction is in conflict with the First Circuit's view as expressed in *Massei* v. *United States*, *supra*. There the trial

court had charged that evidence of graft in pre-prosecution years permitted an inference of continuing graft in the prosecution years. In reversing the conviction, the First Circuit declared, "It is not a legally permissible inference, absent some reasonable connection, that appellant, having committed a criminal act in the past, continued to do so." The court then indicated that any "reasonable connection" was lacking. 241 F. 2d at 902. Here the alleged connection is even less apparent. In the *Massei* case the conduct alleged in the prosecution years was the same as the conduct shown in the prior years. In this case the alleged intention to evade tax was very different and distinct from petitioner's admitted separation of the pawnshop and the sales shop.

Whether or not petitioner was guilty of tax evasion, he was entitled to a correct charge on the substantive element of willfulness. Cf. *Spies* v. *United States, supra,* at 500. Nor is the principle of law here involved "a mere technical rule of law. It arises out of the fundamental demand for justice and fairness which lies at the basis of our jurisprudence." Parker, J., in *Lovely* v. *United States, supra,* at 389. This principle is peculiarly important in net worth prosecutions, where, in any event, juries can too easily infer guilt. See *Holland* v. *United States, supra,* at 128.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

A. Cause Argued and Submitted

April 3, 1957

Before: ALLEN, MCALLISTER and STEWART, JJ.

This cause is argued by Hal Gerber for appellant and by Millsaps Fitzhugh for appellee and is submitted to the court.

B. Judgment Below

(Filed July 2, 1957)

Appeal from the United States District Court for the Western District of Tennessee.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

C. Opinion Below

(Filed July 2, 1957)

No. 13034

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM EPSTEIN, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Western District of Tennessee, Western Division.

Decided July 2, 1957

Before ALLEN, McALLISTER and STEWART, Circuit Judges.

ALLEN, Circuit Judge. Defendant[1] was convicted in jury trial on all four counts of an indictment charging willful evasion of income taxes for the years 1949, 1950, 1951, and 1952. The indictment charged that defendant underreported his income in 1949 in the amount of $40,527.62; in 1950 in the amount of $29,216.09; in 1951 in the amount of $52,799.25; and in 1952 in the amount of $24,397.29, or a total for the four years of $146,940.25.

During all of the period in question and for over 30 years previously defendant had operated a pawnshop and a store in Memphis, Tennessee. Up to January, 1949, he kept his own books in the pawnshop business. Thereafter he delegated this task to professional bookkeepers. While defendant's counsel claims that the evidence is "over-

[1] The appellant will be denominated as in the court below.

whelming" that defendant's books were adequate, the testimony of his own witnesses indicated that they were not adequate. After January, 1949, the books were posted by one Leonard Weis, defendant's witness, who made up periodical statements from memoranda received from defendant and his wife, which Weis said he was given "once a month * * * to put on the books." While Weis computed purchases from checks, the loans were paid out of cash and the memoranda were the only record Weis had as to the loans. A similar system where the books of a business were merely a computation of slips from the totals of a cash register which had no tapes was held by the Tax Court of the United States not to correctly reflect the taxpayer's income and this court affirmed that holding in *Kurnick* v. *Commissioner of Internal Revenue*, 232 Fed. (2d) 678, 680.

Defendant's income tax returns from 1945 on were prepared by W. C. Summers, defendant's witness, a bookkeeper attached to the accounting firm of Homer K. Jones & Company. Summers prepared the income tax returns partly from records made by Weis and from information furnished to Summers by defendant and his wife. This system of making up income tax returns of income derived from extensive business operations based on oral statements or monthly memoranda is subject to the same criticism as the manner of posting the books by Weis.

Summers stated that he made "No verification in any way" and put on the return whatever they told him. Summers told defendant that there should be a "better system" and suggested that defendant keep more accurate records and that defendant have Summers's accounting firm "set up a good set of books." This advice was not followed.

An agent of the Internal Revenue Service who examined defendant's books testified that most of

defendant's expenses "were paid by cash" and he knew of no way to check the books. He testified, "I feel that the figures on the books are not correct." Summers stated to Norris, Special Agent with the Intelligence Division of the Internal Revenue Service, that there was no way "to verify sales" from these books and that no one could "verify expenditures made in currency." This being the case, the Commissioner was authorized under the regulations and statute to compute petitioner's income in a way that would clearly reflect his income. The net worth method was employed. Defendant's tax accountant, Homer Jones, agreed that this was the proper method in view of the condition of the books.

Defendant contends that because defendant kept books and no specific false entries were shown, the net worth method of proof is not applicable. However, *Holland* v. *United States*, 348 U. S. 121, which affirmed a conviction for fraudulent evasion of income tax computed under the net worth method, decides this point squarely in favor of the Government. In the *Holland* case the conviction was attacked upon the specific ground that the Government was unable to point out any false entries. The Supreme Court stated: "Nevertheless, if we believe the Government's evidence, as the jury did, we must conclude that the defendants' books were more consistent than truthful, and that many items of income had disappeared before they had even reached the recording stage. *Holland* v. *United States, supra*, 132.

The net worth method as used by Norris employed many items of independent evidence such as defendant's income tax returns as to merchandise and inventory, bank statements furnished by defendant, cancelled checks, and other bank records as well as testimony from numerous witnesses as to the purchase by defendant or from defendant of valuable pieces of land and amounts paid for them during the years in question.

The court did not err in overruling defendant's motion for acquittal. While the evidence was in controversy the government, through many witnesses and exhibits, presented evidence of substantial understatement of income for each of the taxable years. The Government also presented evidence of the existence of a current tax source, namely, income from the pawnbroker business, the store, and substantial income from other sources. The consistent understatement of large amounts of income for a number of years is evidence of willful intent to evade. *Kurnick* v. *Commissioner, supra,* 681; *Drieborg* v. *Commissioner of Internal Revenue,* 225 Fed. (2d) 216 (C. A. 6). In *Holland* v. *United States, supra,* 139, the Supreme Court declared that "evidence of a consistent pattern of underreporting large amounts of income" will support "an inference of willfulness."

Norris's computation as to assets and liabilities for the years under indictment, other than cash, he testified were almost identical with the figures calculated for the same items by Homer Jones, head of Summers's accounting firm prior to the early summer of 1955. This was not denied. It was shown that defendant's total expenditures during the taxable years over and above the cost of operating his business were $368,951.85.[2] The total net income reported by defendant during that time was $88,170.19.[2]

[2] The itemized expenditures as figured by Norris are as follows:

1949-1952	
Business Investments	$127,464.65
Real Estate	106,966.93
Living Expenses	49,869.54
Federal Income Tax	22,900.17
Life Insurance	9,448.84
Stocks & Bonds	18,139.53
Servants' Salary	10,411.00
Automobiles	5,183.43
Increase Bank Balance	7,850.45
Paid Loans, etc.	9,757.95
Capital Loss	959.56
TOTAL	$368,951.85

These calculations, which the jury evidently believed, showed that defendant's private expenditures exceeded his total available income and entitled the jury to find that defendant had large unreported income. Exhibit 11 Norris showed the total income of Epstein (1920 to 1948) per filing record was $320,848.50; of Pearl Epstein (1937 to 1948), $35.138.18; of J. P. Kirschner (1937 to 1948), $128,977.98; total for these three people, $484,964.66. The total expenditures as shown by the same exhibit, during the same period, were $514,010.90. Similar circumstances were held in *United States* v. *Johnson*, 319 U. S. 503, 517, cited with approval in *Holland* v. *United States*, *supra*, 138, to support the finding that defendant in that case had some unreported income which was properly attributable to his earnings. When questioned by Norris, defendant herein declared that there were no nontaxable sources for large net worth increases such as gifts, loans, or inheritances. Cf. *Holland* v. *United States*, *supra*, 137. The important leads particularly stressed in the *Holland* case were lacking. Moreover, the jury could reasonably find from this record of exhaustive investigation that a likely source of net worth increase existed in the pawnbroker's business and the Kirschner business with their many cash transactions.

A crucial point of the controversy is the Government's calculation of net worth as of December 31, 1948. The Government figured net worth for that year at $246,839.63 and the increase in net worth for that year as $36,004.18. Corresponding figures for 1949 are $299,437.25 net worth, $52,597.62 increase in net worth; for 1950, $347,247.16 net worth, $47,809.91 increase in net worth; for 1951, $385,694.21 net worth, $38,447.05 increase in net worth; for 1952, $403,264.87 net worth, $17,570.66 increase in net worth. The corrected net income calculated for the years 1949, 1950, 1951 and 1952 was $60,633.24, $66,358.55, $69,325.84 and $38,792.41, respectively. The figure for net income reported by defendant for 1949 was $20,105.62;

for 1950, $37,142.46; for 1951, $16,520.99; for 1952, $14,395.12. The Government figured that the net income not reported for the taxable years was as follows:

1949	$40,527.62
1950	29,216.09
1951	52,799.25
1952	24,397.29

Defendant in a statement introduced in evidence calculated a much larger amount than the Government figure for the net worth of the taxable years. For December 31, 1948, defendant calculated $356,695.47; for 1949, $389,508.15; for 1950, $408,852.75; for 1951, $403,261.66; for 1952, $400,630.43. This made the increases in net worth for the taxable years much smaller than those of the Government's calculation so that the income computed in defendant's statement tallied very closely with the net income reported by defendant in his income tax returns.

The opening net worth calculated by the Government for December 31, 1948, was $246,839.63 and by defendant the same figure was calculated as $356,695.47.

Except for cash on hand and in the bank, the assets given by Norris, the Government witness, in the Condensed Net Worth Determination (Exhibit 5 to Norris) were the same assets listed in Exhibit 1 to Deutsch, the calculation of a net worth statement for defendant and his wife made by defendant's expert witness and the valuation set was the same in each calculation. The Norris statement for 1948 gives cash on hand $20,000 and cash in bank $6,183.51. The defendant's statement gives cash on hand $20,000; Mrs. Pearl Epstein $27,116.02; and J. P. Kirschner Accumulation $82,739.82. The principal difference in the ultimate calculation arises from the inclusion of the last two items in defendant's statement. Norris took his figure from defendant's own statements made not only to him but to Dun & Bradstreet and to

a bank. Defendant said that he took his figure from his own cash as figured by Norris, that of his wife and the accumulation of net income from the Kirschner store, all of which, he said, was kept in an open safe in his pawnbroker shop, the only safe in the shop. The figure of $27,116.02 for Mrs. Epstein was later raised to $63,000.

Several witnesses for defendant, including a police commissioner and a police chief, testified that they had seen large amounts of money in the safe. The police chief had seen $100 bills taken from it. Defendant stated to the Internal Revenue agent that no one except his wife and son knew the amount of cash in it. Mrs. Epstein did not testify, but her affidavit received in evidence said that she knew of her own knowledge that large amounts of cash, including the Kirschner accumulation, were kept in the safe. The son did not testify on this point. Defendant did not take the stand.

Defendant had made many statements contradictory to his claim first asserted to Norris in 1955 that he had a cash balance of $168,000 in his safe on December 31, 1948. During the course of the Government investigation he at first stated to Treasury Investigator Norris that he had $6,000 to $8,000 cash in his safe. Later he stated to Norris that he had $22,000 in cash in the same vault at the beginning of 1948. On June 21, 1955, this cash amount was increased by defendant's attorneys to $168,000. Beginning with 1937 defendant had given a number of voluntary reports to Dun & Bradstreet. The Dun & Bradstreet report of 1945 lists cash on hand and in the banks in the sum of $20,000 and lists the same amount in 1946. The amount defendant reported for cash on hand in March, 1947, was $15,000.

Defendant also made signed statements to the Union Planters National Bank of Memphis for the purpose of procuring and maintaining credit. One of these stated that he had "cash on hand and in bank $20,000" on Feb-

ruary 2, 1945, another that he had "cash on hand $17,500 and cash in bank $3,600" on December 31, 1949.

The facts as to the Kirschner store, for which defendant lists an accumulation of $82,739.82 as part of his cash on hand December 31, 1948, present further substantial contradictions. This store belonged to defendant prior to 1937. It was located in the same building as the pawnbroker shop and the two concerns had a connecting door. On May 30, 1937, the Tennessee Legislature passed an act, Chapter 185, Public Laws of 1937, forbidding pawnbrokers to carry on any other business or vocation, directly or indirectly, in the same building or in any other building adjoining the place of business and also forbidding anyone licensed as a pawnbroker from keeping more than one house, shop, or place for such business of pawnbroker. Defendant in an affidavit received in evidence declared that because of this enactment his counsel advised him "to transfer my merchandise inventory to J. P. Kirschner and the J. P. Kirschner store was operated at 162-164 Beale, while my pawnshop was operated at 166 Beale. . . ." Defendant's son testified that counsel advised defendant to seal the opening between the two stores and to place the sales store in the name of "a trusted relative, and . . . make two separate establishments . . . and . . . to keep separate books, separate records, and file all separate tax returns on that basis." In an interview with Norris, defendant said that he separated these stores upon the advice of an attorney, who counseled him to "file returns in the name of Kirschner." Norris testified that defendant said "he figured out the using of Kirschner's name in order to get around that in the law." Kirschner was defendant's father-in-law.

From 1937 to 1948 the income from the Kirschner store was returned separately and not included in defendant's income tax return. Section 17 of Chapter 185, Public Laws of 1937, was repealed in 1949 and after that the

Kirschner store was dissolved, the inventory was taken over by defendant, and returns of income from the Kirschner store were made on defendant's tax returns.

Defendant's affidavit states that after the door was walled up between the pawnshop and the store in 1937, "my wife Pearl Epstein was employed as bookkeeper, while I practically managed the Kirschner store from 166 Beale as well as my own business. . . ." The affidavit also states that Kirschner received no salary or pay in any form from defendant during the years 1937 to 1949, but that J. P. Kirschner and his wife, the latter until her death in 1942, and the former until his death in 1952, lived with defendant and paid no board.

The arrangement that a partition should be put between the two establishments, that the second business be put in the name of defendant's father-in-law with the license issued nominally to Kirschner, and that income tax returns be filed separately, all of which arrangement was carried out to the letter, indicates that the purpose of the transfer was not to change the location of the store. The location was not in fact changed. To move the store into another building if it had been done would not require the transfer to defendant's father-in-law. The shift in the conduct of the business of the store had two important results: (1) Defendant had only one pawnbroker business listed under his name and Sections 6 and 17 were thus apparently complied with; (2) There was a substantial reduction in income tax.

As to the item of $82,739.82 cash on hand from the Kirschner store defendant finds himself on the horn of a dilemma. If during the years in which the Kirschner income accumulated the store belonged to defendant he should have returned this income in his personal income tax. If the store belonged to Kirschner the income received did not belong to defendant and could not be figured in cash on hand as of December 31, 1948, in

establishing net worth. Defendant did not explain this situation. The jury was entitled, if it found the store belonged to the defendant, to consider defendant's failure to return the yearly net income of the Kirschner store in his income tax return as evidence of substantial evasion. If the jury found the store belonged to Kirschner it was entitled to disregard the sum of $82,739.82 in the calculation of net worth.

The investigation conducted by Norris was not only thorough but fair. He held repeated and extensive conferences with defendant's attorneys and accountants and frankly stated to them the detailed basis for his various calculations. The jury was entitled to consider the fact that the shift in defendant's position as to cash on hand, that he had $168,000 on December 31, 1948, was made after Norris had fully disclosed his accounting to defendant and his representatives.

Norris's estimates were based not only on the great quantity of documentary evidence mentioned above, but upon information obtained from numerous witnesses. The computation of personal expenditures was made on the basis of minimum expenditures. The estimates as to the value of defendant's real estate, stocks and bonds, and other property were based upon cost. With reference to the controversial point of cash on hand December 31, 1948, Norris went back to defendant's bank statement for December 31, 1946, showing cash on hand and in the bank of $21,740, which was the largest amount of cash on hand and in the bank shown on defendant's financial statements prior to the one for 1949. This was a financial advantage to defendant in the calculation of his net worth.

Whatever the precise grounds, the jury evidently did not believe defendant's story that he had, on December 31, 1948, $168,000 kept in his open safe.

Defendant makes numerous attacks upon the charge of the court, all of which have been considered. We deem

it unnecessary to discuss these objections in detail. The charge, read in its full context, and considered from its four corners, is clear, complete, correct, and fair.

Defendant's contention that the court committed reversible error in refusing to give a requested charge that his statements from Dun & Bradstreet and the signed statements given to The Union Planters Bank were extrajudicial statements which within recent decisions of the Supreme Court required corroboration requires more extended comment. Defendant, relying principally upon *Smith* v. *United States*, 348 U. S. 147, not only contends that his statements to Norris require corroboration, but also that his own statements made to private business concerns years before the controversy arose constitute extrajudicial statements which cannot be introduced in evidence unless they are corroborated by independent evidence. The *Smith* case, 152, 153, held that the statement required to be corroborated is "suspect if it is extracted from one who is under the pressure of a police investigation. . . ." The Supreme Court declared that extrajudicial admissions given during police investigation have something of the nature of a confession and that the accused may not be convicted upon such admissions if uncorroborated. The court held the corroboration requirement applies to mere admissions "at least where, as in this case, the admission is made after the fact to an official charged with investigating the possibility of wrongdoing, and the statement embraces an element vital to the Government's case." However, in a note, page 155, the Supreme Court also states that admissions given under special circumstances, providing grounds for a strong inference of responsibility, may not have to be corroborated. *Miles* v. *United States*, 103 U. S. 304, 311, 312; *State* v. *Saltzman*, 241 Iowa, 1373.

In *United States* v. *Calderon*, 348 U. S. 160, 165, the court pointed out that the only evidence of defendant's

fortunes between 1935 and 1946, the first prosecution year, consisted of his tax returns for 1944 and 1945 "and some meager evidence with regard to his tax returns for 1941, 1942 and 1943." The court said, "The latter apparently was obtained from the respondent, and, standing uncorroborated, cannot serve to corroborate respondent's other admissions."

The Dun & Bradstreet statements and the bank statements, relied on by both parties, are in an entirely different category from the statements made to Norris. They are not admissions although they shed light upon opening net worth.

They are not even declarations against interest; they were made for defendant's benefit. They constituted the best evidence under the general principle that a man's own acts, conduct, and declarations which were voluntary, are always admissible in evidence against him. *United States* v. *Wood*, 14 Peters 430. They were in fact independent evidence admissible without corroboration. In themselves they strongly corroborated the extrajudicial statements made to Investigator Norris covering the years concerned. As the requested charge on this point linked the statements made before investigation together with the statements made in course of investigation, it was properly refused.

Five objections relate to the admission of charts embodying the calculations of the Treasury Department in detail. There was no error in the admission of these charts. They were presented in explanation of the net worth calculations. While the testimony concerning certain of the items was in controversy, evidence was presented which entitled the jury to believe that the charts were substantially accurate. They were shown to be based upon the evidence, defendant's numerous statements, oral and written, his cancelled checks, bank records, and oral testimony of disinterested witnesses. It has been

repeatedly held by this court that such charts are admissible. *Smith* v. *United States*, 239 Fed. (2d) 168 (C. A. 6); *Gariepy* v. *United States*, 189 Fed. (2d) 459 (C. A. 6). Cf. *Eggleton* v. *United States*, 227 Fed. (2d) 493 (C. A. 6). The trial court in its charge left the jury "free to exercise its untrammeled judgment upon the worth and weight" of the evidence given in the charts. *Smith* v. *United States, supra.*

The contention that the court committed reversible error in permitting the admission of two letters signed by Eugene Bernstein in explanation of one of the charts has no merit. Bernstein was an accountant employed to represent defendant. During the course of the investigation he wrote one letter (dated February 3, 1955), on the letterhead of his accountant's firm, with reference to the holdings of defendant and his wife. He wrote a similar letter on the letterhead of defendant's attorneys in which his name is listed as tax counsel, giving similar information with reference to the transactions between defendant and The Jameson Construction Company. These statements from attorney and tax counsel are plainly competent.

Counsel for both parties failed to observe our rule as to preparation of briefs and appendices, Rule 16 (e). The Dun & Bradstreet reports and the bank statements particularly relied on were not printed in either appendix. Numerous items of testimony were referred to without page citations. This imposes an unnecessary burden on the court. Continued disregard of the rule in this respect may, in the future, call for reprimand, as well as an order postponing hearing and requiring reprinting of the appendices.

No reversible error appearing, the judgment of the District Court is affirmed.

D. Order Extending Time to File Petition for Writ of Certiorari

SUPREME COURT OF THE UNITED STATES

No. , October Term, 1957.

WILLIAM EPSTEIN, *Petitioner*

v.

UNITED STATES OF AMERICA

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 31, 1957.

WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Court of the United States.

Dated this 24th day of July, 1957.

E. Tennessee Public Acts, 1937, Chapter 185

Sec. 6. *Be it further enacted,* That no person licensed as a pawnbroker shall, by virtue of one license, keep more than one house, shop or place for such business of pawnbroker, provided, however, that such person may remove from one place of business to another as provided for in Section 3.

Sec. 17. *Be it further enacted,* That no person licensed as aforesaid shall carry on any other business or vocation, directly or indirectly, in the same building, or in any building adjoining the place or building in which he may be licensed to carry on the business of pawnbroker, loan broker or keeper of a loan office.

Provided that nothing in this Act shall be taken to preclude a pawnbroker from selling or disposing of unredeemed and repossessed pledges from his place of business.

F. Tennessee Public Acts, 1949, Chapter No. 205
(Approved 4-14-49)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That Chapter 185, Public Acts of 1937, the caption of which is set forth in the caption hereof, be and the same hereby is amended by striking in its entirety Section 17 of said Act, as codified at Section 6750.16 of the 1949 Supplement to the Code of Tennessee.

SECTION 2. BE IT FURTHER ENACTED, That this Act shall take effect from and after its passage, the Public Welfare requiring it.

PASSED: April 13, 1949.

G(1) (Exhibit 1 to Deutsch)

William & Pearl Epstein — Net Worth Reconciliation 12-31-1948 — 12-31-1952

	12-31-48	12-31-49	12-31-50	12-31-51	12-31-52	Difference
ASSETS						
Cash on Hand: Per Mr. Norris (Mr. W. Epstein)	20,000.00	17,500.00	17,000.00	16,524.18	16,000.00	(4,000.00)
Mrs. Pearl Epstein)	27,116.02	7,689.69				(27,116.02)
J. P. Kirschner Accumulation) Per Affidavit	82,739.82	82,739.82	62,922.81	19,543.28		(82,739.82)
Cash in Bank: Per Mr. Norris	6,183.51	4,179.41	7,164.69	12,029.86	4,896.00	(1,287.51)
U. S. Government Bonds—Per Mr. Norris	40,392.79	41,030.29	46,730.29	47,492.79	48,255.29	7,862.50
Stocks & Securities—Per Mr. Norris	31,229.10	33,131.73	38,750.13	42,268.63	36,708.66	5,479.56
Investments in Partnerships & Joint Ventures—Per Mr. Norris	34,397.43	43,805.20	57,288.30	58,865.24	149,926.25	115,528.82
Inventory Wm. Epstein Store (Returns)	72,509.50	124,986.45	132,250.75	141,278.60		(72,509.50)
Fixtures & Furniture—Store—Per Mr. Norris	597.00	1,597.00	1,597.00	1,597.00	1,597.00	1,000.00
Real Estate & Improvements—Per Mr. Norris	40,000.00	40,000.00	49,411.31	107,450.48	146,966.93	106,966.93
Notes & Loans Receivable—Per Mr. Norris	22,297.45	19,281.13	17,364.90	47,173.85	87,191.65	64,894.20
Option on Banner Laundry Bldg.		775.00				
TOTAL ASSETS	377,462.62	416,715.72	430,480.18	494,223.91	491,541.78	114,079.16
LIABILITIES						
Notes and Accts. Payable (Mr. Norris)	10,000.00	12,000.00	7,000.00	64,006.79	59,248.84	49,248.34
Unrealized Profit on Installment Notes, Real Estate—(Mr. Norris)		4,220.51	3,376.41	12,448.15	13,259.94	13,259.94
Unrealized Profit—Note Purchased at Discount—(Mr. Norris)				1,421.96	1,323.05	1,323.05
Depreciation Reserve—(Mr. Norris)	7,568.06	8,736.74	9,938.75	11,480.76	14,065.74	6,497.68
Outstanding Checks—(Mr. Norris)	3,199.09	1,591.71	(4.95)	(371.24)	379.34	(2,819.75)
Depreciation—Business Car—Reserve		658.61	1,317.22	1,975.83	2,634.44	2,634.44
TOTAL LIABILITIES	20,767.15	27,207.57	21,627.43	90,962.25	90,911.35	70,144.20
NET WORTH	356,695.47	389,508.15	408,852.75	403,261.66	400,630.43	43,934.96
INCREASES IN NET WORTH		32,812.68	19,344.60	(5,591.09)	(2,631.23)	43,934.96
Add Adjustments						
Fed. Income Tax—(Mr. Norris)		4,986.10	3,227.36	11,225.82	3,460.89	22,900.17
Life Insurance Premiums—(Mr. Norris)		2,352.76	2,369.36	2,365.36	2,361.36	9,448.84
Salaries to Domestics—(Mr. Norris)		2,500.00	2,500.00	2,652.00	2,759.00	10,411.00
Automobiles Purchased—(Mr. Norris)		2,633.43	2,550.00			5,183.43
Personal Expenses—(Defendant's)		7,403.13	6,343.13	7,926.07	10,236.95	31,909.28
Cap. Gains or Losses—(Per Return)		(2,568.52)	(1,672.85)	323.09	(550.83)	(4,469.11)
Inventory Kirschner—(Per Return)		(27,218.55)				(27,218.55)
Nat Epstein's Household Contribution		(1,560.00)	(1,560.00)	(1,560.00)	(1,560.00)	(6,240.00)
Cash From Maynard					(1,250.00)	(1,250.00)
Loss From Jaffee Not Claimed—(Per Return)				(1,126.81)	(429.48)	(1,556.29)
Excess of Mr. Norris Living Expense For '48 Over Actual		(2,600.00)				(2,600.00)
NET INCOME COMPUTED		18,741.03	33,101.60	16,214.44	12,396.66	80,453.73
NET INCOME REPORTED		20,105.62	37,142.46	16,526.59	14,395.52	88,170.19

G(2) (Exhibit 5 to Norris)

William and Pearl Epstein

Condensed Net Worth Determination of Net Income

For Years Ending December 31, 1948 to December 31, 1952

Description of Items	1947	1948	1949	1950	1951	1952	Totals
ASSETS							
1. Cash on Hand	$ 21,740.00	$ 20,000.00	$ 17,500.00	$ 17,000.00	$ 16,524.18	$ 16,000.00	$ (5,740.00)
2. Cash in Bank	4,440.54	6,183.51	4,179.41	7,164.69	12,029.86	4,896.00	455.46
3. U. S. Government Bonds	44,755.29	40,392.79	41,030.29	46,730.29	47,492.79	48,255.29	3,500.00
4. Stocks and Securities	29,309.10	31,229.10	33,131.73	38,750.13	42,268.63	36,708.66	7,399.56
5. Investments in Partnerships and Joint Ventures	30,969.11	34,397.43	43,805.20	57,288.30	58,865.24	149,926.25	118,957.14
6. Inventory, Wm. Epstein Pawn & Sales Business	49,850.50	72,509.50	124,986.45	132,250.75	141,278.60	—0—	(49,850.50)
7. Fixtures, Wm. Epstein Pawn and Sales Business	597.00	597.00	1,597.00	1,597.00	1,597.00	1,597.00	1,000.00
8. Real Estate and Improvements	40,000.00	40,000.00	40,000.00	49,411.31	107,450.48	146,966.93	106,966.93
9. Notes and Loans Receivable	17,297.45	22,297.45	19,281.13	17,364.90	47,173.85	87,191.65	69,894.20
10. Option on Banner Laundry Building	—0—	—0—	475.00	—0—	—0—	—0—	—0—
TOTAL ASSETS	$238,958.99	$267,606.78	$325,986.21	$367,557.37	$474,680.63	$491,541.78	$252,582.79
LIABILITIES							
11. Notes and Accounts Payable	$20,000.00	$ 10,000.00	$ 12,000.00	$ 7,000.00	$ 64,006.79	$ 59,248.84	$ 39,248.84
12. Unrealized Profit, Installment Sales Real Estate	—0—	—0—	4,220.51	3,376.41	12,448.15	13,259.94	13,259.94
13. Unrealized Profit, Notes Purchased at Discount	—0—	—0—	—0—	—0—	1,421.96	1,323.05	1,323.05
14. Depreciation Reserve	6,466.05	7,568.06	8,736.74	9,938.75	11,480.76	14,065.74	7,599.69
15. Outstanding Checks	1,657.49	3,199.09	1,591.71	(4.95)	(371.24)	[illegible]9.34	(1,278.15)
TOTAL LIABILITIES	$ 28,123.54	$ 20,767.15	$ 26,548.96	$ 20,310.21	$ 88,986.42	$ 88,276.91	$ 60,153.37
	$210,835.45	$246,839.63	$299,437.25	$347,247.16	$385,694.21	$403,264.87	$192,429.42
NET WORTH							
INCREASE NET WORTH		$ 36,004.18	$ 52,597.62	$ 47,809.91	$ 38,447.05	$ 17,570.66	$192,429.42
16. Federal Income Taxes Paid		12,916.78	4,986.10	3,227.36	11,225.82	3,460.89	35,816.95
17. Life Insurance Premiums Paid		2,356.76	2,352.76	2,369.36	2,365.36	2,361.36	11,805.60
18. Salaries to Domestic Help		2,500.00	2,500.00	2,500.00	2,652.00	2,759.00	12,911.00
19. Automobiles Purchased		—0—	2,633.43	2,550.00	—0—	—0—	5,183.43
20. Personal Living Expenses (Based on 2 bk accts only)		10,000.00	13,906.08	8,952.63	14,089.89	12,920.94	59,869.54
21. Contributions and Deductible Expenditures		6,482.65	4,630.35	2,936.93	1,712.71	3,812.92	19,575.56
22. Non-deductible Portion of Capital Loss		—0—	—0—	—0—	959.56	—0—	959.56
23. Non-taxable Capital Gains		(24.47)	(1,621.65)	(1,050.71)	(413.84)	(280.44)	(3,391.11)
24. Allowable Contributions & Deductible Expenditures		(6,482.65)	(4,630.35)	(2,936.93)	(1,712.71)	(3,812.92)	(19,575.56)
25. Inventory Received from Kirschner's Store		—0—	(16,721.10)	—0—	—0—	—0—	(16,721.10)
CORRECTED NET INCOME		$ 63,753.25	$ 60,633.24	$ 66,358.55	$ 69,325.84	$ 38,792.41	$298,863.29
NET INCOME REPORTED		$ 23,584.90	$ 20,105.62	$ 37,142.46	$ 16,526.59	$ 14,395.12	$111,754.69
NET INCOME NOT REPORTED		$ 40,168.35	$ 40,527.62	$ 29,216.09	$ 52,799.25	$ 24,397.29	$187,108.60

G(3) Disposition of Corrected Net Income Per Indictment

Exhibit 8 Norris

Description	1949	1950	1951	1952	Total
Business Investments	$ 60,343.40	$ 18,356.17	$ 40,413.74	$ 8,351.14	$127,464.45
Real Estate	—0—	9,411.31	58,039.17	39,516.45	106,966.93
Living Expenses	13,906.08	8,952.63	14,089.89	12,920.94	49,869.54
Federal Income Tax	4,986.10	3,227.36	11,225.82	3,460.89	22,900.17
Life Insurance	2,352.76	2,369.36	2,365.36	2,361.36	9,448.84
Stock & Bonds	2,540.13	11,318.40	4,281.00	—0—	18,139.53
Servants' Salary	2,500.00	2,500.00	2,652.00	2,759.00	10,411.00
Automobiles	2,633.43	2,550.00	—0—	—0—	5,183.43
Increase Bank Balance	—0—	2,985.28	4,865.17	—0—	7,850.45
Paid Loans; etc.	—0—	5,000.00	—0—	4,757.95	9,757.95
Capital Loss	—0—	—0—	959.56	—0—	959.56
TOTAL	$ 89,261.90	$ 66,670.51	$138,891.71	$ 74,127.73	$368,951.85
Less:					
Net Income Reported	$ 20,105.62	$ 37,142.46	$16,526.59	$ 14,395.12	$ 88,169.79
Non Taxable Income, etc.	28,628.66	311.96	69,565.87	35,335.32	133,841.81
TOTAL	(48,734.28)	(37,454.42)	(86,092.46)	(49,730.44)	(222,011.60)
Difference or Unreported Income	$40,527.62	$ 29,216.09	$ 52,799.25	$ 24,397.29	$146,940.25

G(4)—Average Combined Income of Epstein's Loan Office and Sales Store for Periods 1945 to 1948 and 1949 to 1952

Exhibit 10 Norris

Items	Businesses 1945-1948	Businesses 1949-1952	Difference
Gross Receipts	$301,072.95	$226,316.27	$ 74,756.68
Cost Goods Sold	(219,568.94)	(151,501.25)	(38,067.69)
GROSS PROFIT	$ 81,504.01	$ 44,815.02	$ 36,688.99
Expenses	(46,828.93)	(36,711.71)	(10,117.22)
NET PROFIT	$ 34,675.08	$ 8,103.31	$ 26,571.77
	Both	Both	Yearly

G(5)—Application of Total Available Income for Period 1920 to 1948, Inclusive

Exhibit 11 Norris

Income per Filing Record			Amount
William Epstein	(1920 to 1948)		$320,848.50
Pearl Epstein	(1937 to 1948)		35,138.18
J. P. Kirschner	(1937 to 1948)		128,977.98
TOTAL INCOME			$484,964.66
Less:			
Federal Income Taxes		$ 95,121.73	
Life Insurance		33,495.55	
Charity Taxes, etc.		19,144.58	
Servants' Salary		10,500.00	
Kirschner Inventory		21,909.41	
Personal Effects		15,000.00	
Living Expenses		72,000.00	
Net Worth (12-31-48)		246,839.63	
TOTAL EXPENDITURES			(514,010.90)
Difference or Excess Expenditure over Income			$(29,046.24)

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OCT 17 1957
JOHN T. FEY, Clerk

No. 417

In the Supreme Court of the United States.

OCTOBER TERM, 1957

WILLIAM EPSTEIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 2a–14a) is at 246 F. 2d 563.

JURISDICTION

The judgment of the Court of Appeals was entered on July 2, 1957. (Pet. 1a.) On July 24, 1957, by order of Mr. Justice Brennan, the time for filing a petition for a writ of certiorari was extended to August 31, 1957. (Pet. 15a.) The petition was filed August 30, 1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the verdict.

2. Whether the Court erred in instructing the jury that on the question of intent it could consider evidence that in pre-indictment years petitioner omitted substantial amounts of income from his returns.

STATUTE INVOLVED

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1952 ed., Sec. 145.)

STATEMENT

On February 21, 1956, an indictment in four counts was returned against petitioner in the United States District Court for the Western District of Tennessee charging willful attempted evasion of income tax for

each of the years 1949 through 1952 by filing false and fraudulent returns in violation of Section 145 (b) of the Internal Revenue Code of 1939. (R. 1a.)[1] The amounts of petitioner's reported and correct net income and tax liability as alleged in the indictment were as follows (R. 48a; Supp. R. 91b–92b):

Year	Reported		Corrected	
	Income	Tax	Income	Tax
1949	$20,105	$4,278	$60,633	$22,844
1950	37,142	11,225	66,358	26,874
1951	16,526	3,866	69,325	32,303
1952	14,395	3,492	38,792	14,848

After a jury trial, petitioner was found guilty as charged. (R. 255a.) On June 26, 1956, he was sentenced to imprisonment for five years on each count, the sentences to run concurrently, and fined a total of $25,000. (R. 1a, 256a.) The Court of Appeals affirmed. (Pet. 2a–14a.)

The evidence to support the verdict may be summarized, briefly, as follows:

During the prosecution years (1949–1952), and for 25 years prior thereto, petitioner operated a pawnshop and an adjacent merchandise store in Memphis, Tennessee.[2] For three years prior to 1924, he conducted a pawnshop in partnership with one Nathan Karnowsky.

---

[1] The record consists of the appendices to the briefs in the Court of Appeals. The appellant's appendix is designated herein as "R." The Government's appendix is designated "Supp. R."

[2] In addition, petitioner made numerous investments (Pet. 17a–18a), and was a partner in a dry goods store located in Osceola, Arkansas (Supp. R. 36b–37b).

From 1912 until 1921, he was employed in various pawnshops in Memphis, with the exception of three years which he spent on a family farm in Arkansas, and a period of military service during World War I. (R. 118a–120a.) From June 1937 until April 1949, the merchandise store was conducted in the name of petitioner's father-in-law, J. P. Kirschner. Petitioner, however, continued to operate the business, and although the income therefrom was admittedly (Pet. 26) taxable to petitioner, it was omitted from his returns and reported in income tax returns filed by Kirschner. During that period, a state law was in effect which prohibited pawnbrokers from maintaining any other business in the same building or one adjoining that in which their pawnshop was located. (R. 64a–65a, 121a–122a, 128a–130a.)

Petitioner's pawnshop and merchandise business consisted largely of cash transactions. (R. 15a; Supp. R. 80b.) His record of the receipts and expenditures of the two businesses for the years in question consisted of "a little book" in "memorandum form". (Supp. R. 10b.) The entries in the book were made once a month by a public accountant, Louis T. Weis, principally from a "memorandum" submitted by petitioner. (Supp. R. 121b–122b.) Petitioner's income tax returns for the years involved were prepared by another public accountant, Wallace C. Summers. In preparing the tax returns, Summers took the figures for business receipts and expenses from the book maintained by Weis. (R. 7a–8a; Supp. R. 7b–11b.) On several occasions during the prosecution years,

Summers advised petitioner (Supp. R. 10b) "to keep more accurate books and records" for his business. In the course of the investigation, which disclosed expenditures by petitioner and his wife greatly in excess of reported income for the years in question, Summers agreed with the agents that many of the entries in the petitioner's books could not be verified; that petitioner's records "were not adequate" nor "sufficient to prepare a correct income tax return" (Supp. R. 80b); and that under the circumstances "the best means available" to determine his true income was the net worth method (Supp. R. 77b).

The prosecution's case was based upon the net worth method of proof. The evidence showed that during the years 1949 through 1952, petitioner's net worth increased from $246,000 to $403,000, and that, based upon the increases in net worth plus nondeductible expenditures, his true net income for the four-year period aggregated $235,000, whereas his reported net income for the period totaled only $88,000, a difference of some $147,000. (Supp. R. 97b, 100b.) The assets, liabilities, and expenditures included in the net worth determination were not disputed by petitioner, with the exception of the item of undeposited cash on hand. (Compare Exs. G (1) and G (2) reproduced in the appendix to the petition, pp. 17a–18a.)

The defense was a belated claim of a cash hoard on hand at the beginning of the prosecution period sufficient to account for most of the bulge in petitioner's net worth during the prosecution years. In the Government's net worth computation, petitioner was credited with an opening net worth of $246,000, including

an item of undeposited cash on hand in the amount of $20,000. He claimed a cash hoard on hand at the end of 1948 of approximately $130,000. This cash hoard, according to petitioner, was accumulated entirely out of earnings in pre-indictment years and consisted of (1) the item of $20,000 with which he was credited by the prosecution, (2) the sum of $82,739 which he claimed he segregated and saved during the period the merchandise store was operated in the name of his father-in-law, Kirschner, and (3) alleged savings of his wife in the amount of $27,116. (R. 118a–127a, 200a–213a; Ex. G (1), Pet. 17a.) Petitioner, admittedly, never received any gifts or inheritances. (Supp. R. 83b, 112b.) The cash hoard was allegedly kept in a safe in petitioner's pawnshop. According to the defense testimony, the door to the safe was left upon and the cash hoard was visible to "anybody that walked in his establishment." (R. 39a–40a, 122a–123a, 127a–128a.) Petitioner did not take the stand.

The prosecution presented a large body of evidence which negatived the possession by petitioner and his wife on the critical date of undeposited cash in excess of the $20,000 with which he was credited. In the course of the investigation, petitioner told Special Agent Norris that he never had more than $20,000 in undeposited cash on hand. Prior thereto, he had stated to Revenue Agent Huddleston that the largest amount of cash he ever had at one time was between $35,000 and $40,000. (R. 15a, 41a, 77a; Supp. R. 112b, 114b.) Financial statements submitted by petitioner to his bank in support of loan applications showed

undeposited cash on hand as of December 31, 1946, and December 31, 1949, of less than $20,000. (R. 52a–53a.) Financial reports submitted by petitioner to Dun and Bradstreet in 1943, 1944, 1945, and 1947 reflected undeposited cash on hand in varying amounts up to $20,000. (Collective Ex. 1 to Mason, R. 31a.) In fact, it was not until after the investigation had been substantially completed, and petitioner had been informed by the agents of the approximate amount of unreported income for the period reflected by the net worth determination, that petitioner laid claim to a cash hoard of $130,000. (Supp. R. 69b–83b, 85b–87b, 101b.) Moreover, both prior to and during the prosecution years, petitioner frequently borrowed money from the Union Planters Bank in Memphis, although he was allegedly in possession of a cash hoard in excess of $100,000. From 1947 through 1952, the interest paid by petitioner on these bank loans totaled $6,702. (Supp. R. 23b–30b.) In addition, the evidence relating to petitioner's financial history revealed that in the pre-indictment years the expenditures of petitioner and his wife were substantially in excess of their available funds based upon reported income, including the income of the merchandise store reported in the returns filed by petitioner's father-in-law. The income reported by petitioner and his wife for the years 1920 through 1948,[3] plus the income re-

[3] During this period, petitioner did not file an income tax return for some years. In computing petitioner's available funds, the agents assumed that in the years in which no return was filed, petitioner had a gross income in the maximum amount which would not require filing a return. (R. 75a.)

ported by petitioner's father-in-law during the period in which the merchandise store was conducted in his name, aggregated some $484,000, whereas during the same period the known expenditures of petitioner and his wife totaled $514,000. (R. 72a–75a; Supp. R. 109b–112b; Ex. G (5), Pet. 20a.)

The prosecution also established that for the four years immediately preceding the prosecution period (1945–1948), petitioner reported an average net profit from the operation of his pawnshop and merchandise business of $34,675. During the prosecution years, his reported net profit from this source averaged only $8,103 a year. (R. 68a–69a; Ex. G (4), Pet. 20a.)

The court instructed the jury, in part, as follows (R. 225a, 226a):

> On the question of intent, concerning any particular phase of the case, the jury may consider whether the defendant acted in good faith upon the advice of legal counsel, after a full disclosure of all the facts to his legal counsel. And the Court instructs you, with respect to the separation of what has been referred to in the trial as the Kirschner Sales Store from the defendant's pawn shop, as required by an act of the Tennessee Legislature, that this is a matter you may consider on that phase of the case which deals with the filing of a separate tax return for the sales store and whether or not the defendant in filing a separate return or permitting such a separate filing willfully intended to evade by fraudulent means his just taxes for any given tax year under consideration in this case.
>
> * * * * *

Further, in an effort to be helpful, the Court instructs you on the question of willfulness or intent to evade income taxes, by way of illustration and not by way of limitation, there are certain matters which you might consider, pointing to intent, so far as tax evasion is concerned, if you find any one of them existed in this case: Concealment of assets, covering up or concealment of sources of income, handling one's affairs to avoid the making of usual records, and any conduct, the likelihood of which would be to mislead or conceal. I might say here, it is not permissible under the tax laws for one who owns more than one business to split or lessen his income tax liability by filing or permitting the filing of a separate return for one of such businesses, even though the return is made out and filed in the name of a third person.

ARGUMENT

1. Petitioner challenges (Pet. 11–28) the sufficiency of the net worth proof on two grounds: He contends that the prosecution (a) failed to establish his opening net worth with reasonable certainty, and (b) failed to adduce evidence of a likely source of unreported income to which the net worth increases could be attributed. Neither of these contentions has merit.

(a) With respect to opening net worth, petitioner's contention (Pet. 19–28) amounts to no more than a complaint that the prosecution failed to credit him with the alleged cash hoard. Petitioner claims (Pet. 23, 25) that in addition to the undeposited cash in the amount of $20,000 with which he was credited by the

prosecution, he had on hand at the beginning of the prosecution period $82,739, representing accumulated earnings of the merchandise store for the period in which this business was conducted in the name of, and the income therefrom reported by, his father-in-law, Kirschner, plus savings of petitioner's wife in the sum of $27,116. The existence of the alleged cash hoard in the amount claimed was a question of fact for the jury. As is apparent from the verdict, it resolved this question against petitioner. Suffice it to note that here, as in *Holland* v. *United States*, 348 U. S. 121, and *Friedberg* v. *United States*, 348 U. S. 142, there was a large body of evidence, *supra*, pp. 6–8, negativing the possession by petitioner on the critical date of a cash hoard in excess of the amount credited by the prosecution. This evidence revealed a thorough and painstaking investigation of petitioner's financial and reporting history going back to 1913, at which time petitioner was 19 years of age. Although petitioner claimed that the cash hoard was accumulated out of earnings in pre-indictment years, the evidence belied the claim. The record shows that from 1920 through 1948, petitioner and his wife had expended sums substantially in excess of their reported income for this period, including the income from the merchandise store reported by petitioner's father-in-law. This evidence provided ample corroboration of petitioner's extra-judicial admission to the investigating agents that he never had more than $20,000 or $40,000 in undeposited cash at any time. *Smith* v. *United States*, 348 U. S. 147; *United States* v. *Calderon*, 348 U. S. 160.

(b) Petitioner's contention (Pet. 11–19) that the evidence fails to reveal a likely source of income to which the net worth increases could be attributed ignores the facts of record. The evidence established, *supra*, pp. 3–5, 8, that during the prosecution years petitioner not only owned and operated a profitable pawnshop and merchandise business, but that the business was capable of producing much more income than was reported by petitioner. Such a showing is sufficient to support the inference that petitioner's net worth increases were attributable to currently taxable income. *Holland* v. *United States*, *supra*.

Contrary to petitioner's assertion (Pet. 14), this case does not present the same question now pending before this Court in *United States* v. *Massei* (No. 98) and *Ford* v. *United States* (No. 82) on writs of certiorari to the Courts of Appeals for the First and Second Circuits, respectively. Here, unlike the situation in the *Massei* and *Ford* cases, which involved salaried employees, the Government offered direct affirmative proof of a likely source to support the inference that the net worth increases were attributable to currently taxable income. Petitioner's reliance on *Thomas* v. *Commissioner*, 232 F. 2d 520 (C. A. 1st), a civil fraud case involving net worth proof, is misplaced. Petitioner recognizes (Pet. 18, fn. 17) that in the *Thomas* case the court emphasized that there was no evidence that the taxpayer's business was capable of producing substantially more income than was reported. Here there was such evidence.

2. There is likewise no merit in petitioner's contention (Pet. 28–31) that the court erred in instruct-

ing the jury that on the question of intent it could consider petitioner's conduct in omitting from his returns in pre-indictment years the income from the merchandise store. Petitioner concedes (Pet. 26) that the income from the merchandise store, which was reported by his father-in-law from 1937 until 1949, was taxable to and should have been reported by him. Petitioner assumes (Pet. 30), however, that his conduct in omitting this income from his returns could not have constituted attempted income tax evasion as well as an attempt to conceal his ownership of the store in violation of local law. Accordingly, citing *Boyd* v. *United States*, 142 U. S. 450, and *Johnson* v. *United States*, 318 U. S. 189, 195,[4] petitioner argues (Pet. 29) that the court below erred in failing to apply the principle that "other wrongs, unrelated to the offense charged, cannot be considered in determining the guilt of an accused". Whether petitioner intended to evade his income taxes in omitting the store's income from his returns for prior years was, of course, a question of fact which was properly left for determination by the jury. In any event, petitioner's acts in omitting the store's income from his prior returns and his acts

[4] In *Johnson* v. *United States*, 318 U. S. 189, where, as here, the defendant was charged with income tax evasion, inquiry into his receipts prior to the prosecution years was held to be proper to show the continuous nature of his income during the prosecution years; in *Boyd* v. *United States*, 142 U. S. 450, 454, evidence of the defendant's previous offenses which "had no necessary connection with, and did not, in the slightest degree, elucidate the issue before the jury" was held inadmissible. In *Nye & Nissen* v. *United States*, 336 U. S. 613, 618, this Court held that evidence of similar and related offenses tending to show a consistent pattern of conduct was admissible to show intent.

directly in issue—namely, the omission from his returns for the indictment period of income from the store and pawnshop—were certainly of a kindred character. Applicable here, therefore, is not the principle which taxpayer would invoke, but rather the long-settled rule, as stated by this Court speaking through Mr. Justice Story in *Wood* v. *United States*, 16 Pet. 341, 358–360, that:

> where the intent of the party is matter in issue, it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party, of a kindred character, in order to illustrate or establish his intent or motive in the particular act directly in judgment. Indeed, in no other way would it be practicable, in many cases, to establish such intent or motive, for the single act, taken by itself, may not be decisive either way; but when taken in connection with others of the like character and nature, the intent and motive may be demonstrated almost with a conclusive certainty. * * *
>
> They constitute exceptions to the general rule, excluding evidence not directly comprehended within the issue; or rather, perhaps, it may with more certainty be said, the exception is necessarily embodied in the very substance of the rule; for whatever does legally conduce to establish the points in issue, is necessarily embraced in it, and therefore, a proper subject of proof, whether it be direct or only presumptive. * * * The same doctrine has been held in cases of the uttering of bad money and spurious notes * * *.

> Cases of fraud present a still more stringent necessity for the application of the same principle; for fraud, being essentially a matter of motive and intention, is often deducible only from a great variety of circumstances, no one of which is absolutely decisive; but all combined together may become almost irresistible as to the true nature and character of the transaction in controversy. * * *

See also II *Wigmore on Evidence* (3d ed.), Secs. 302 and 321 (2) (c). Under the circumstances, therefore, the trial court's instruction on this issue was entirely proper.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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